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VIASNA human rights center

FORCED LABOR AND PERVASIVE VIOLATIONS OF WORKERS' RIGHTS IN BELARUS

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



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Cover photo: Prisoners of the correctional facility in Babruysk ©AFP

The FIDH and Human Rights Center Viasna Mission

The gross, systematic, and widespread violations of political and civil rights in Belarus have been the subject of numerous reports prepared by both international and Belarusian observers.

Meanwhile, President Lukashenko and government officials in general are using any forum they can to stress that Belarus is a model of social and economic rights by contrasting the robust guarantees its residents receive with the situation of residents in neighboring countries who suffered a number of economic upheavals following the fall of the Soviet Union. The government uses this phenomenon of the "last remaining socialist paradise" in the region to frighten citizens with a scenario of turbulence in the event of a change in Belarus's political course. Experts believe that this is one of the reasons how Lukashenko's regime has managed to remain so stable.

FIDH and HRC Viasna have gathered a great deal of evidence showing that violations of the social and economic rights of citizens, in particular their right to work and to be protected from forced labor, are pervasive. The rights of the entire population are being violated both in statutes and in actual fact. Moreover, orders and decrees regulating labor relationships that have been issued by Lukashenko violate the international labor and human rights standards. In their public commentaries concerning legislative and other acts, both President Lukashenko and his spokespeople have made astoundingly cynical statements that are in sharp contrast to the persisting myth of Belarus as a "country of social guarantees."

In June 2013, FIDH and HRC Viasna conducted a joint international investigative mission with the objective of examining work conditions in Belarus. The mission focused on **the contract system, elements of forced labor, and the situation concerning unions and union activists fighting for the observance of workers' rights**. To obtain the most complete picture possible, the mission visited Minsk and several other regions of the country.

Those surveyed included about 40 representatives of various population groups that have experienced the most systematic violations of labor rights, as well as members of union and human rights organizations.

The mission tried to meet with the widest possible circle of individuals that have encountered forced, compulsory, or bonded labor. Members of the mission spoke with students in order to compile a picture of how Belarusian laws correspond to international standards concerning the principles and practice of compulsory assignments, and studied the questions of a required participation in "subbotniks" (see below); or of the dropouts, unemployed people, and so-called "obligated persons", who are forced to perform socially useful labor; with prisoners forced to work in detention centers like penal colonies and labor centers for people sentenced for drug or alcohol treatment; and with members of the transportation and other troops of the Ministry of Defence

The mission visited the village Staroselie in the Goretsky District of the Mahilyow Region where a women's Medical-Labour center is situated, and observed how inmates were ferried around from various work places.

The mission also met with representatives of the Belarusian Congress of Democratic Trade Unions, the Belarusian Union of Workers in the Radio Electronic Industry and other branches of the economy. In Miklashevichi, the mission met with a group of workers who lost their jobs and have been persecuted for attempting to create an independent union at the Granit Plant.

Members of the mission, which took place from June 24 – 30, 2013, included Valentin Stefanovich, deputy chairman of HRC Viasna; Artak Kirakosyan, chairman of the board of the Civil Society Institute (Armenia); Sergey Mikheev, a lawyer at the Anti-Discrimination Center Memorial (Russia); and Alexandra Koulaeva, head of the Eastern Europe and Central Asia Desk at FIDH (France).

FIDH and HRC Viasna heartily thank all the NGOs and experts who provided valuable expertise and useful contacts which permitted this report to be concluded, in particular the associations Belarusian Helsinki Committee, "Platform Innovation" and "Solidarity" as well as Belarusian Congress of Democratic Trade Unions, Belarusian Union of Workers in the Radio Electronic Industry and International Trade Union Confederation (ITUC).

I. Introduction

> *"They only transmit, everything is decided "on the top". When we come to argue, they all say one of these two phrases : either "I know, you are right, but please understand me" or "I'm sure you already understand everything yourself…". And everything is said by this, it means there is nothing to do."*
>
> From the mission interview

Alexander Lukashenko's monopoly on power in Belarus, a country of 9.7 million people that covers an area of 207,600 km^2, reaches back over the past 19 years and is not limited to the political arena. Experts estimate that the state owns 70 percent of the economy and believe that the government hierarchy is totally dependent on this one man and his close associates. This makes it possible for the state to exert a constant and pervasive influence over the organization and supervision of production, which has negative direct and indirect consequences for the life and circumstances of workers, as well as for the overall social and economic situation.

The two spheres of political control and the violation of workers' rights intersect insofar. The strict government monitoring of working relationships serves both the interests of the state's economic monopoly and the creation of an entire range of methods for intimidating and repressing workers who express disagreement or attempt to defend their rights and voice their civic-mindedness. The situations discussed below that were examined by the mission or tracked in the local press give the clear illustration of the state's arbitrary treatment of workplace relationships specifically in situations with a political subtext: for dissidents, the labor code and corresponding presidential decrees actually perform the functions of repressive institutions, since loss of a job carries the threat of serious difficulties that serve as an important deterrent. The state has created all the conditions necessary for forcing different groups of people to perform labor and to make employed people as dependent as they possibly can be on their workplace and their employers, who are in turn under the control of the political police (KGB), ideological officials, and simply "decrees from above." At the same time, mechanisms have also been established to fire undesirable individuals.

The overlapping of spheres — so typical of the Belarusian regime — made this research much more difficult. Clear violations of workers' rights may be closely interwoven with persecution of a political nature or be a result of such persecution, even though it is based on "legal acts" relating to workplace relationships. This difficulty is exacerbated by the fact that socially active people are more likely to publicize violations, while white- and blue-collar workers, whose rights are violated only within the sphere of labor rights, rarely report violations because they fear this will only make their situations worse, causing them to be suspected of social activism. As a result, the percentage of reported cases with a political context is significantly higher.

The Political Context

Alexander Lukashenko, the first president of Belarus, was elected on July 20, 1994 and continues to hold power thanks to a series of constitutional amendments. The referendum that took place in November 1996 was essentially a constitutional change that made it possible to broaden presidential powers and extend the first presidential mandate for an additional two years. The Supreme Soviet, elected in 1995, was dissolved and replaced with a bicameral parliament whose deputies were in point of fact appointed by the president.

On September 9, 2001, Lukashenko was reelected to a five-year term in the first round of voting with an official result of 76.6 percent of the votes. Many violations took place during the election and the results were not accepted by OSCE observers. During parliamentary elections on October 17, 2004, Lukashenko organized a referendum on the possibility of running again in the 2006 presidential

election. This led to a change in the constitution whereby the article setting a limit of two presidential terms was revoked. On the evening of March 19, 2006, tens of thousands of people came out onto October Square in Minsk to protest the falsification of results in the presidential election. Several hundred protesters were beaten in a tent city which the police took over during the night of March 23 – 24. The protesters in the tent city were arrested with the use of brutal force and received administrative sentences of deprivation of freedom.

On January 1, 2006, a number of changes to Belarusian laws took effect that laid the legal basis for new violations of human rights.

The situation becomes especially severe during election campaigns or times of mass protest. The authorities place restrictions on the freedom of peaceful demonstrators and regularly prohibit demonstrations on contrived grounds, mainly under the pretext of "difficulties maintaining public order" during mass actions. The authorities also frequently resort to firing demonstration participants from their jobs or expelling them from their universities.

Following the most recent presidential elections on December 19, 2010, a wave of repressions led to a significant worsening in the situation with human rights and civil and political freedoms in terms of the scale, duration, and scope of the repressions.

The mass administrative arrests and detentions of hundreds of people that took place on December 19 – 20 were characterized by excessive use of brute force, interrogations, and trials that were held in gross violation of procedures, statutes, and international norms. The criminal cases, which were fabricated in an atmosphere where the executive branch maintains tight control over the judicial system, were accompanied by searches and interrogations, intimidation, and slanderous campaigns against a wide circle of civil and political activists. Independent lawyers and dozens of students and white-collar workers were also subjected to pressure and repression, including being fired from their jobs or expelled from school in connection with their civil and political activities.

Over 40 people were convicted in criminal cases (for mass unrest, group actions violating public order, and hooliganism) and 30 people were sentenced to deprivation of freedom, including three former presidential candidates (Andrei Sannikov and Dzmitry Us received five-year sentences and Mikola Statkevich received a six-year sentence).

Finally, a media campaign was deployed to blacken civil activists and human rights defenders, including members of HRC Viasna, FIDH member organization in Belarus. As part of this campaign, programs on nationwide television regularly mentioned the illegal and harmful role played by HRC Viasna and its members, with particular attention paid to the activities of HRC Viasna head and FIDH Vice-President Ales Bialiatski. On August 4, 2011 Ales Bialiatski was arrested and later sentenced to four and a half years of strict regime detention in a penal colony.

International response to the systematic human rights violations in Belarus

A Partnership and Cooperation Agreement between the EU and Belarus was signed on March 6, 1995, but ratification by EU member states has been on hold since 1997.

The illegal holding of a referendum in 2004, the absence of conditions for holding free and fair presidential elections in 2006, the suppression of mass actions, the arrests of demonstrators and members of the opposition, the harsh treatment of political prisoners, and the lack of any real progress investigating the disappearances of Zakharenko, Gonchar, Krasovsky, and Zavadsky impelled the EU to introduce sanctions against senior Belarusian officials, who were banned from entering EU territory in April 2006. The next month the EU expanded the sanctions by freezing European bank accounts belonging to the Belarusian president and another 35 government officials. In October of the same year, another

four Belarusian officials were added to the list of individuals to whom sanctions were applied. The term of the sanctions was extended in 2007 and again in April 2008 due to the lack of progress. In parallel, in 2007 several international and European unions filed a request with the EU to organize an investigation into violations of freedom of association and the right to organize, in accordance with International Labor Organization (ILO) conventions CO87 and CO98. After the EU determined that these violations were "serious and gross" and following the suggestion of the ILO, the EU Council of Ministers decided that the country was no more qualified for trade tariff benefits under the General System of Preferences and withdrew those for systematic violation of trade union rights imposed further (economic) sanctions on Belarus which deprived it of some of the most advantageous EU preferences it was receiving.

Visa restrictions for Lukashenko and his representatives were lifted in 2008 after the government released several political prisoners and made some fairly nebulous promises in regard to democratic reforms, including changing the electoral code. In 2009, Belarus was included in the EU Eastern Partnership Project, and the country held its first meeting within the framework of the EU – Belarus Human Rights Dialogue. Finally, Belarus stepped up its cooperation with the OSCE and its institutions.

The situation worsened after the presidential election of December 19, 2010. To condemn the mass repressions against the opposition that took place after these elections, on January 31, 2011, the EU banned 158 senior Belarusian officials, including President Lukashenko and two of his sons—Viktor and Dmitry—as well as defense minister Yury Zhadobin and KGB chairman Vadim Zaitsev, from entering the EU territory. The EU also decided to freeze their bank accounts when such were found. On March 21, 2011, the EU added another 19 officials to the list, and on October 15, 2012, the Council extended the sanctions for a further 12 months. A total of 242 persons are subject to a travel ban and an asset freeze in the EU, and a total of 30 business entities are also subject to the asset freeze. An embargo on arms and materials that can be used for internal repression was imposed in June 2011. On October 29, 2013, the annual review of the EU Council extended EU restrictive measures against Belarus until 31 October 2014. The updated list of those targeted with a travel ban and freeze of their assets within the EU include 232 persons, and 25 entities remain subject to EU sanctions.

On January 31, 2011, the United States also imposed sanctions on Belarusian officials. US citizens were banned from doing business with the two largest petrochemical companies in Belarus—Lakokraska OJSC and PolotskSteklovolokno OJSC. Also, many names were added to the list of Belarusian officials and family members that are banned from entering the United States and are subject to financial sanctions. The State Department also announced the imposition of four types of sanctions in relation to Belarusneft Production Association on March 29, 2011. These sanctions included prohibitions on export support from the US Export-Import Bank, denial of export licenses issued by the US government, denial of loans in excess of $10 million per year from private American banks, and prohibitions on entering into contracts with the US government.

In late May 2013, the State Department lifted sanctions against Beltekhexport CJSC and the Belarusian Optical and Mechanical Association (BelOMO). These sanctions had been imposed in 2011 for violation of the Iran, North Korea, and Syria Nonproliferation Act and were lifted when the terms expired. However, the US embassy stresses that "all the remaining US government sanctions remain in effect, including sanctions imposed on January 31, 2011 and in August 2011 in response to government actions after the presidential election of December 19, 2010."

In connection with especially serious threats to Belarus's ability to meet its commitments in the human dimension, in 2011 the OSCE Permanent Council mandated an investigative mission in accordance with paragraph 12 of the Moscow Mechanism of the Conference on the Human Dimension of the CSCE (1991).

The Economic Context

The main branches of Belarus's economy are machine building and metal working, potash mining, and the chemical and petrochemical industry. Belarus's main export partners are Russia, the Netherlands, Great Britain, Ukraine, Poland, and Latvia, while its main import partners are Russia, Germany, and Ukraine. 14 percent of the working population is employed in the agricultural sector, 34.7 percent works in industry, and 51.3 percent works in the service sector. Belarus is also an important transit country for Russian hydrocarbons: the total volume of Russian oil that is transported across Belarusian territory amounts to approximately half of all Russian oil exports, and as far as Russian natural gas is concerned, Belarus has the largest gas pipeline network behind Slovakia and Ukraine. Over 4,000 deposits of 30 types of minerals used throughout the world have been discovered in Belarusian subsoil. Belarus has also one of the largest commercial reserves of potash in Europe.

Regime ideologues argue that Lukashenko is the model of a responsible politician who actually holds himself accountable for his country. The planning system, which is a remnant of Soviet times; the ability to play off the differences between Russia and the European Union and the preservation of industry are the fundamental principles of the modern Belarusian state.

For a long time, Belarus' capacity to maneuver between its two neighbors and, most importantly, between their disagreements actually helped the Belarusian economy. The economic miracle of Belarus, which authorities have used as an example for their Eastern and Western partners over the past 15 years, had at its root two basic principles: extraordinarily close trade connections with Russia and cheap energy supplies delivered at rates only slightly higher than rates on the domestic Russian market. However, the picture has started to change over the past three to five years as successful entrepreneurs have themselves become the targets of repression with the disappearance of small and mid-sized businesses and as industry in general has begun to experience serious difficulties. To make matters worse, with the beginning of the financial crisis in 2008 Moscow started trying to move pricing to the market rate and the situation with Western investments and loans was negatively impacted by the repressions following the 2010 presidential election.

In April 2011, the Board of Directors at the European Bank for Reconstruction and Development held a meeting to examine the Bank's activities in Belarus. The Bank noted a certain amount of progress in the economic sphere, but "with account for the negative political events connected with the December 2010 presidential election, as well as for the lingering concern of the international community in relation to the government's treatment of the political opposition, civil society organizations, and the independent media, the Board of Directors has decided to ... no longer consider investing in projects in the state sector in the areas of energy or transportation infrastructure. The Bank will also no longer consider participating directly with the government sector in the area of sustainable energy."[1]

The country has also seen an increase in difficulties with employment, production downtime, the contract system, which will be analyzed below, and low salaries, which have together turned Belarus into a country from which hundreds of thousands of people flee in search of employment and freedom, while the remaining population experiences social difficulties in almost all spheres of life.

Economists at the Eurasian Development Bank have noted that the inflation rate decelerated between 2011 and 2012, from an extremely high rate of 108.7 percent in 2011 (or 118 percent by other estimates) to 21.7 percent in 2012. In its evaluation of how Belarus met the terms for the fifth tranche of an emergency loan from the EurAsEC Anti-Crisis Fund, the EADB predicted that "without controlling monetary expansion and ending its policy of expansion, the inflation rate could increase to up to 30 percent in 2013."[2] At the same time, in February 2013 the European Bank for Reconstruction and Development predicted that annual inflation would increase by only 15 percent.

1. http://www.ebrd.com/pages/country/belarus/strategy.shtml
2. http://acf.eabr.org/e/projects_acf_e/belarus_project_eng/index.php?id_4=26758

Under Order No. 1144 "On Setting the Size of the Minimum Wage," issued by the Council of Ministers of Belarus on December 13, 2012, beginning January 1, 2013, the minimum monthly and hourly wages were set at 1,395,000 rubles (125.55 euros) and 8,340 rubles (1 euro) respectively.

Figures from the Ministry of Economics show that the profit margins for stores selling food items and for stores selling non-food items are three and seven percent respectively. Since the beginning of the crisis in 2008, the government has had to sharply increase financing for large companies that exist solely due to subsidies from "oil earnings."

For the past year and a half, Belarusian factories have not been able to gain a foothold in their former sales markets and most companies continue to produce only to fill their warehouses. When sales dry up, forced, unpaid leave is imposed on workers.

In recent years, social guarantees have been slashed, and in September 2013, the procedures for calculating pensions were changed, even though these procedures had been held up to neighboring countries as an example for years. Presidential Order No. 389 dated 3 September 2013 decrees that "*beginning January 1, 2014, the right to a retirement pension for length of service shall be extended under the condition that payment of required premiums into the Ministry of Labor's Social Protection Fund in accordance with laws on state social insurance have been made for no less than ten years*." This is a particularly difficult blow for people who have been forced to work in neighboring countries or to earn money through private trade as so-called shuttle traders because previously the period for contributions was capped at five years. The order also notes that this decision was adopted "*with a goal to streamlining disbursement of funds from state social insurance*."

In the summer of 2013, the Belarusian Council of Ministers issued a resolution introducing new procedures for calculating payments related to temporary disability, pregnancy and maternity leave. For example, under the new rules a worker will now be paid 80 percent of his or her average wages for the first 12 days of sick leave. Previously this period lasted for six days, with 100 percent of average wages being paid beginning on the seventh day of leave. The period used to determine average daily wages was also changed. It used to be based on two calendar months, but now average daily wages are calculated on the basis of the worker's wage data over the past six months.[3]

International standards and Belarus's international obligations

Human rights instruments

Belarus applied to join the Council of Europe on May 12, 1993, and the Committee of Ministers assigned it the status of candidate for membership on April 15, 1993. The Parliamentary Assembly assigned the Belarusian parliament the status of special guest on September 16, 1992. This status was suspended on January 13, 1997 after the 1996 parliamentary elections were declared non-democratic and a constitutional referendum was held in the same year. On January 30, 2004, the Bureau of the Parliamentary Assembly refused to restore the special guest status to the Belarusian parliament, noting that the reason for the suspension was still in effect. Thus, Belarus is neither a party to the European Convention on Human Rights, nor to the European Social Charter.

As a member of the OSCE, Belarus has certain commitments in the area of human rights. However, these standards do not have a binding nature in international law and are instead merely a formalized political promise to share OSCE values and standards.

Thus, the only international human rights agreements that are currently in effect in Belarus are those that were adopted within the framework of the United Nations.

3. Resolution of the Council of Ministers of the Republic of Belarus № 569 of 28 June 2013

Belarus ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) in 1973. The International Covenant on Civil and Political Rights (ICCPR) explicitely prohibits the use of forced labor in Article 8(3)(a), which reads: "No one shall be required to perform forced or compulsory labor." Article 6(1) of the International Covenant on Economic, Social, and Cultural Rights enshrines the right of each individual "to gain his living by work which he freely chooses or accepts."

Amongst other international legal or soft-law instruments which are particularly relevant to this report are: the Convention Against Torture, the UN Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in 1990 and the Standard Minimum Rules for the Treatment of Prisoners and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

However, Belarus is increasingly openly ignoring decisions issued by UN human rights treaty-bodies and Special Procedures, such as the Human Rights Committee (HRC), the Working Group on Arbitrary Detention, and other bodies. The Belarusian Ministry of Foreign Affairs has officially stated that HRC decisions in individual complaints are not binding, and it has not complied with any of these decisions. Even death sentences are implemented when individual appeals in these cases have been registered with the HRC and Belarusian government has been informed that emergency proceedings regarding these cases have been launched.

In 2004, the HRC voted to appoint a Special Rapporteur on the Situation in Belarus, but his mandate was not extended in 2007. On July 6, 2012, the UN Human Rights Council adopted a resolution on the situation of human rights in Belarus. The resolution notes that "The Council expresses deep regret at the conclusions reached in the report of the UN High Commissioner for Human Rights that attest to the existence since December 19, 2010 of the practice of serious, systematic violations of human rights, including increasing restrictions on fundamental freedoms…." With this resolution, members of the Council resolved to appoint a Special Rapporteur to observe the situation of human rights in Belarus, and Miklós Haraszti was appointed to this post on September 28, 2012. On June 13, 2013, the HRC adopted a resolution to extend the mandate of the Special Rapporteur and expressed its deep concern regarding the continuing violation of human rights in the country.

In a response to a decision published in late 2012 by the Working Group on Arbitrary Detention in the case of Ales Bialiatski, who has been in prison since August 2011, the Belarusian delegation announced in March 2013 that it would be ending its cooperation with this UN mechanism.

ILO Conventions

The Republic of Belarus has been a member of the International Labor Organization (ILO) since 1954. As such, it has ratified ILO's eight fundamental conventions.[4]

Furthermore, ILO's Declaration on Fundamental Principles and Rights at Work and its Follow-up is relevant in that it follows the quasi-universal ratification of ILO Convention C029 on Forced Labor.

In accordance with Article 2(1) of C029 "for the purposes of this Convention the term ***forced or compulsory labor*** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

4. C029 - Forced Labor Convention, 1930; C087 - Freedom of Association and Protection of the Right to Organize Convention, 1948; C098 - Right to Organize and Collective Bargaining Convention, 1949; C100 - Equal Remuneration Convention, 1951; C105 - Abolition of Forced Labor Convention, 1957; C111 - Discrimination (Employment and Occupation) Convention, 1958; C138 - Minimum Age Convention, 1973; C182 - Worst Forms of Child Labor Convention, 1999

Nevertheless, “for the purposes of this Convention, the term ***forced or compulsory labor*** **shall not include**:

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

[...]

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services. (Article 2(2)).”

National legal framework

According to the rules set forth in Article 6(2) of the Civil Code, Article 15(2) of the law “On the International Agreements of the Republic of Belarus,” and Article 20(2) of the law “On Regulatory Acts of the Republic of Belarus,” after acts on the ratification of international treaties take effect, the norms of these international treaties become part of the laws in force within Belarus and are subject to direct applicability.

Belarus enshrined these dictates of international norms on the prohibition of forced labor in its Constitution and Labor Code. For example, Article 41(4) of the Constitution proclaims that “forced labor shall be prohibited, with the exception of work or service specified by a conviction in a court of law or in accordance with the state of emergency law or martial law.”

A similar prohibition is contained in Article 13 of the Labor Code. Moreover, in implementing international norms prohibiting forced labor in domestic laws, part 2 of this article cites norms that are the same in meaning and content as norms in ILO C105, with account for the effect of Article 14 of the Labor Code on prohibiting discrimination in the sphere of labor.

In clarifying and expanding on the contents of Article 41(4) of the Constitution, Article 13(3) of the Labor Code indicates that “forced labor does not include:

1) work performed as a consequence of a final conviction in a court of law that is carried out under the supervision of public authorities responsible for ensuring that court convictions are executed in accordance with the law;

2) work, the performance of which is based on military service laws or state of emergency laws.”

By virtue of Article 8(4) of the Labor Code, in cases where an international treaty or an ILO convention sets different rules than those stipulated in the Belarusian labor legislation, the laws from applicable international treaty or convention are applied.

II. Labor as a Core Value… and an Unlimited Obligation

Just like in Soviet times, the concept of "labor for the good of the Motherland" is a required attribute of any speech given by the head of state or other officials. Belarus has regularly held productivity competitions and labor holidays, and the best performers are recognized with awards and commendations. Since coming to power in 1996, Lukashenko holds an annual festival known as Dozhinki, which is essentially a socialist remake of the traditional harvest festival. Cities compete to host the festival and the winner receives large subsidies to make repairs in the center and boost production. But residents of the winning city usually have a different view of this honor—the city's executive committee frequently demands that home owners themselves pay for repairs to the facades and exteriors of their buildings, while security measures and festivities interfere with the rhythm of everyday life. Experience has shown that as a rule the winning city is also cleansed of any dissent. This holiday also always includes a visit from the head of state, who makes a traditional speech praising shock workers and criticizing everyone else.
In his speeches, the president is usually fairly eloquent about his approach to agriculture and realistic production estimates. For example, at the 2012 Dozhinki festival in Gorki, Lukashenko called on peasants "to forge the shield of the country's food security" and concluded by saying that "Our dreams have become a reality."

Right to work and right to social security

It is quite difficult to assess the issue of unemployment in Belarus. Let's take, for instance, information published by the National Bank of the Republic of Belarus in mid-2012: "The number of unemployed people officially registered with state employment agencies as of the end of May 2012 was 27,900, which was 3,000 less than the same figure for December 2011. The level of registered unemployment as of the end of June 2012 was 0.6 percent of the workforce. According to results of a survey taken of households to study the population's employment rate using the methodology of the International Labor Organization, which was conducted from May 14 – 20, 2012, the number of unemployed people amounted to 267,700 people. According to the data from this study, the unemployment level amounted to 5.1 percent of the workforce."[5]

Despite the above, unemployment is officially calculated only if it is registered with employment agencies, which means that the authorities can always give the same number of a 0.5 percent unemployment rate in the country.

Moreover, people really do not find it that attractive to register with employment agencies. In April 2013, the average size of benefits for one unemployed person equaled 153,600 rubles, or 15.8 percent of the average minimum wage budget per capita. To add to this, the registered unemployed must participate in compulsory community service to receive benefits. "On a quarterly basis, local executive and administrative bodies set a minimum number of work days where the unemployed must participate in paid community service for each month of the next quarter that is based on the volume of paid community service and the number of unemployed people (hereinafter, "the monthly norm"). The monthly norm may not exceed ten work days."[6] It is important to note that the community service is of a compulsory nature and is not connected with the unemployed person's qualifications. If the unemployed person fails to meet the monthly norm

5. Analytical Overview "The Main Trends in Economic and Monetary Policy in the Republic of Belarus" http://www.nbrb.by/publications/ectendencies/ National Bank of the Republic of Belarus. January – June 2012.
6. On Approving Provisions on the Terms and Procedures for Organizing and Carrying Out Paid Community Service. Resolution of the Council of Ministers of the Republic of Belarus, No. 1716, December 23, 2006.

without approved justification, then a decision is made to suspend payment of unemployment benefits, which means that time of employment in accordance with which pensions are calculated is suspended.[7]

Such situation constitutes a violation of Belarus' international human rights obligations as per the ICESCR. More specifically, it violates affected individuals' right to social security (article 9 of the ICESCR). As stated in General Comment no. 19 of the Committee on Economic, Social and Cultural Rights, which provides authoritative guidance on the interpretation of ICESCR: […] the right to social security encompasses the right to access and maintain benefits whether in case or in kind, without discrimination in order to secure protection, inter alia, from […] unemployment […]." Section d) 16 adds: "In addition to promoting full, productive and freely chosen employment, States parties must endeavor to provide benefits to cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment. In the case of loss of employment, benefits should be paid for an adequate period of time and at the expiry of the period, the social security system should ensure adequate protection of the unemployed worker, for example through social assistance."

In case retrogressive measures are taken, the State "[...] needs to demonstrate that "(a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level."[8]

In this case, the government of Belarus has not provided reasonable justification for measures taken such as compulsory community service. Furthermore, community service required does not seem to be in any way linked with the unemployed' work interests or field of activity. Measures taken do not seem to aim at facilitating workers' reinsertion in the workplace. On the contrary and as demonstrated below by the government's rhetoric, measures taken are discriminatory and in violation with the right to social security.

Precarious employment

As representatives of the Belarusian Congress of Democratic Trade Unions (BCDTU) explained to members of the FIDH and HRC Viasna mission, there is a great deal of hidden unemployment in addition to the unregistered unemployed. For example, when companies or individual departments go idle, production switches to the warehouse. When downtime that is the fault of the company is recorded, workers must be paid two-thirds of their salaries for days when they cannot work. However, lawyers from the BCDTU noted that instead company management finds other, less expensive paths to avoid this. For example, it "postpones work days" to a later period, which is what the Minsk Automobile Factory did last year when it "postponed" idle work days from June to November. It is clear that because the factory did not have the right to force workers to work on the weekends or to increase the work week by one day, these work days simply "disappeared."

Such practice contradicts national labor standards and puts workers into precarious situations. The employer's practice violates workers' right, under national law, to receive compensation. It also contradicts ILO Convention CO95 on the protection of wages[9], which Belarus has ratified. "Postponing" idle work days rather than then paying workers as per national legislation amounts to disguised employment relationships and a denial of workers' rights.

Finally, as we have already mentioned, up to one million residents of this country with a population of ten million travel to neighboring countries to earn money, which leaves them outside the social benefits of the national system.

7. Article 51 of Law of the Republic of Belarus No. 1596-XII "On Pensions" of 17 April 1992.
8. Committee on Economic, Social and Cultural Rights, General Comment 19, The right to social security(art. 9) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008)
9. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C095

Unemployment or Parasitism?

Citizens who do not work under a labor agreement or who are not registered as self-employed or unemployed automatically fall under the grouping of "non-workers." Without in-depth and objective research into this segment, it is quite difficult to determine the ratio of people in this group who are working without the proper documentation, who wish to conceal the fact that they are working abroad, or who are engaged in an unofficial or semi-legal sphere of business to those who truly do not work. Obviously, homemakers or people from well-off families that actively participate in the country's economy must be grouped with the "non-workers." The very small group remaining is comprised of people who are not employed due to their circumstances and earn a living through begging, performing odd jobs, etc.

Nevertheless, in the state's rhetoric, the phrase "unemployed person" is frequently used interchangeably with the words "non-worker" or "parasite."

In June 2013, an initiative to tax "parasites" (citizens who are not officially working) was proposed by Prime Minister Mikhail Myasnikovich during a meeting with the supervisory body of Mahilyow Region.[10] As the prime minister stated, "*Belarus has almost 445,000 able-bodied citizens who do not work anywhere. These people are not making any kind of contribution whatsoever to developing the economy at the same time as they are taking advantage of social benefits. This situation must be corrected. One of the ways to do this is to introduce a tax on the unemployed.*" This initiative has not yet been confirmed by lawmakers, but it has been discussed in a positive light and on a regular basis by parliamentary deputies, and a vote on it is expected in early 2014.

Alexander Yaroshevich, a deputy to the House of Representatives of the National Assembly, made a proposal to toughen the punishment for "dependency" (yet another word used for unemployment): "*I see dependency as the most pressing problem in our society. If people do not work even when they can, and instead live at the expense of the rest of society, then we have to do something about this. Such examples of parasitism are everywhere - in every region, and not just among the gypsies.*"
Nikolai Ladutko, chairman of the Minsk City Executive Committee, has repeatedly proposed forcing unemployed people to look after lawns and courtyards in the capital.

On November 12, 2013, Svetlana Kretova, head of the Main Department for Financing the Social Sphere and Science at the Belarusian Ministry of Finance again returned to this topic, which, according to her, was under review in the Belarusian parliament. She added that a draft of the corresponding government decision had been prepared. This decision proposed setting annual payments in the amount of a multiple of one base unit. "*For now this amounts to 2.6 million Belarusian rubles*," although the mechanism for monitoring implementation of this decision "*is quite complicated, hefty penalties are being proposed*."[11] According to Kretova, criteria will be introduced for classifying citizens as parasites. The way in which the money collected from the non-workers will be used is still quite vague: "*A decision will be adopted under which these citizens will participate in the formation of the budget. These funds will be used to cover expenses in the social sphere. In other words, they will have to pay for what you all use.*"[12]

Labor of "Asocial Elements"

In addition to praising labor as "the food and industrial security of the country" and to using a number of legalized mechanisms to engage citizens in socially useful work, state rhetoric also includes regular calls (sometimes resulting in actual campaigns, if not actual round ups) for "asocial elements".

10. News portal Tut.by, 7.12.2013: http://news.tut.by/economics/357197.html
11. The Belarusian news agency BELTA http://www.belta.by/ru/all_news/society/V-Belarusi-razrabotan-proekt-ukaza-o-vvedenii-naloga-dlja-tunejadtsev_i_651669.html
12. News portal UDF.by: http://udf.by/news/main_news/89781-nerabotayuschih-belorusov-oblozhat-nalogom-na-tuneyadstvo.html

These questions have been raised at presidential press conferences with Belarusian and foreign journalists, which traditionally take an ideologically calibrated tone both in the form of questions from journalists and in the form of responses from the president. At such a conference on January 18, 2013, the journalist A. Derko (Chasniki Region Radio) posed the following question: "*Belarus is a socially-oriented state, and it is a fact that at different levels, different categories of the population have enjoyed an immense amount of support. At the same time, though, I can unfortunately say that a small group of, how to put it, social dependents, has formed that does not want to work or even take some kind of action to improve its own situation. Are there any plans to address this at the legislative level?*" In response, the president stated that "*We have banged dependents and persons of no fixed abode from behind and will continue to do this so that they will work. That's why we specially address situations that involve children: you abandoned your child, so go work! If you don't want to work, then we will force you to so that you can support your child. Do you understand the question?… We won't waste our time with them…" Twelve thousand people, as you said, this is just a small portion of our society. Thank God that there are so few of them. But from these, and from the others about which you speak, alluding to the fact that there are others who somehow manage to work somewhere, in reality there is no use from them. And this is where we are going to strengthen our demands*."[13]

Senior officials also regularly state that people leading an asocial way of life must be engaged in labor, either of a social or industrial nature.
For example, on June 21, 2013, at an offsite meeting of the Committee to Organize Cooperation between Municipal Authorities and Law Enforcement Authorities in the Sphere of Combatting Crime, Corruption, and Drug Addiction, Nikolai Ladutko, chairman of the Minsk City Executive Committee, spoke on the need to engage people leading "asocial ways of life" in forced labor. "*It must be acknowledged that we do not do enough to work with this category of people, especially in local areas. Here we need to coordinate our efforts with law enforcement bodies, district administrations, community services, and public order units*."[14] Ladutko went on to explain that there were proposals to engage such people in maintaining lawns, removing graffiti from walls, and landscaping.

In a similar vein, on June 20 in Minsk, Deputy Prime Minister Anatoly Tozik noted in a response to a question from the BelaPAN agency that "*The state must care for those people who are not able to provide for themselves. Sometimes we are too kind to this category of people*."[15]
The proposal to use homeless people as a workforce for the benefit of society arises with particular frequency during the fall when leaves are falling heavily from the trees and during the winter at times of heavy snowfall. For example, Vladimir Hodarcevich, general director of the Minsk City Housing Authority Municipal Organization, spoke about this practice at a press conference that took place in Minsk in December 2012. In his remarks, the "voluntary nature" of this work and Hodarcevich's intention to pay for it immediately came under question, and he entrusted the police with supervising the organization of this labor from the outset. According to Hodarcevich, the homeless would not be paid for their work clearing snow: "*They will be working for 'an idea.' But we will certainly provide them with hot tea. We have previous experience using persons of no fixed abode to clean up municipal areas. This kind of work is always carried out under the direct control of law enforcement agencies*." The "work places" were located in remote areas, far from the eyes of any citizen's watch. "*Naturally, this kind of contingent is not going to work in courtyards where children might be playing*," Hodarcevich assured, noting that non-professional snow removers would only be used to clean roadways, for example.[16]

On November 16, 2012, the independent television station Belsat broadcast a special video report about how this kind of work takes place in actual practice.[17] On the previous day, a campaign had been held to tidy up and beautify Leshchinets Park in Homiel. Approximately 20 homeless people and inebriated individuals participated

13. Official internet portal of the President of the Republic of Belarus: http://www.president.gov.by/press140881.html
14. The Belarusian Telegraph Agency BELTA, 06.21.2013: http://www.belta.by/ru/all_news/regions/Veduschix-asotsialnyj-obraz-zhizni-grazhdan-nuzhno-bolee-aktivno-privlekat-k-trudu---Ladutko_i_638828.html
15. http://gazetaby.com/cont/print_rdn.php?sn_nid=58113
16. http://www.interfax.by/news/belarus/121892
17. http://belsat.eu/be/wiadomosci/a,11070,gomielski-bieskhatsiniets-na-subotniku-paradak-pavinien-byts.html and http://belsat.eu/be/obiektyw/wiadomosci/a,5980,bizunom-i-abiedam.html

in the campaign. They were brought to the park by police officers, who picked them up in places where it is not difficult to find the homeless or alcoholics and put them on buses that took them to the park. Even a woman on crutches was swept up in this "cleanup." When they arrived at the park, they were given rakes and ordered to clean up leaves. And, just as Hodarcevich promised at his press conference, the Red Cross handed out tea and canned goods. Even though Senior Inspector Yuri Kebikov of the Department for Law Enforcement and Preventive Measures at the Soviet District Internal Affairs Office stated that "Everyone who is here agreed to participate in the cleanup," "cleaners" interviewed by journalists said that they were brought to the park against their will. As one of the workers explained it, "They said: if you don't go work, you'll go to the police station. It's better to work. But this isn't all of us. About half of us managed to run away." He also said that he was on a bender and had gone into a store for a bottle when the police came. His friend was able to escape, but he got caught in the raid and was taken to the park. "I'm on a bender right now, so it's hard, of course, but as far as working is concerned, there's no question…." Another person explained that "I work at the market. When I got there this morning, I was stopped [by police] and just told to come with them. So I went… and they brought me here to pick up leaves." Someone else said, "It's really OK, there should be order in the city. At least they're feeding us when they could have just forced us to work without it." And a woman who was interviewed said, "It's a great idea! They brought us here on a bus. They told us to work. But how am I going to work on crutches?"

In February 2012, the news agency Minsk Novosti reported that in addition to street sweepers, electricians and plumbers at residential housing services were also brought in to clean streets and that "unemployed people registered at employment centers, students, workers at state enterprises, and people convicted of prostitution" were sent to help with community service. The Main Internal Affairs Directorate of the Minsk City Executive Committee explained that in general women are fined for engaging in prostitution, but that in this case a decision was made to replace the fines with compulsory labor.[18]

During a video conference held by the Internal Affairs Directorate of the Minsk City Executive Committee in February 2012, Konstantin Lyashkevich, head of the Drug Enforcement and Human Trafficking Department summarized his department's results for 2011[19] and announced that under court decisions, 42 commercial sex workers were sent for compulsory labor, including street cleaning.[20]

Remarks made by various senior government officials are clearly discriminatory to unemployed persons or other vulnerable or marginalized groups of society referred in a discriminatory manner as "asocial elements". It contradicts the fundamental human rights principle of non-discrimination, protected in all major international human rights instruments, including those ratified by Belarus. In its General Comment No.20, the Committee on Economic, Social and Cultural Rights (CESCR), strongly reaffirms that the principle of non-discrimination is an immediate and cross-cutting obligation in the Covenant, which is applicable to all economic, social and cultural rights including the right to work and the right to social security.[21] Such mandatory community work – undertaken sometimes in remote areas and most often under the supervision of public authorities – can amount to forced labor. Recalling ILO's definition of forced labor under ILO convention No. 29 as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily ". Nevertheless, there are exceptions to this article, one of them being: (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country (article 2.2.). Similar exceptions can be found in article 8 of the International Covenant on Civil and Political Rights (ICCPR).

The above-mentioned situation does not appear to meet the requirements needed to justify the recourse to this kind of community work, notably because it is undertaken according to discriminatory criteria. Furthermore, to be acceptable, mandatory community work should be analyzed in light of the extent and substance of the duties, as well as the objectives sought.
Even though investigating the cases of students used for agricultural work was not a focus of this mission,

18. http://smizone.info/36774-Minskih_bomzhey_privlekli_k_uborke_snega.html
19. http://guvd.gov.by/news/2612.html
20. http://korrespondent.net/strange/1316845-v-minske-prostitutok-privlekut-k-uborke-ulic-ot-snega
21. Committee on Economic, Social and Cultural Rights, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009.

we must stress that the old Soviet practice of sending young people and workers to cultivate land and gather the harvest is still used all the time in Belarus. These additional working hands are also used at construction sites, and students at state academic institutions are sent to work during the academic year. In September 2013, HRC Viasna published information about students sent out on such work to six farms belonging to an agricultural company in Hlybokaye District. Seven to eight people worked in each brigade. The students collected construction refuse and laid brickwork. Third-year students at Polotsk State University worked at a farm in the village of Obrub-Berezvechsky, and high school students at Hlybokaye Professional Lycée spent their summers working at the farms *Ozertsy* and *Selets*. Lycée director Valentina Shinkevich noted that in September, 75 students helped workers at agricultural companies in Hlybokaye and Sharkaushchyna districts gather potatoes and carrots, even though the academic year had started one month before.[22]

Such practice and its resulting consequences for students could amount to forced labor, given that ILO Convention No. 29 defines forced labour as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Furthermore, ILO Convention no.105 on the Abolition of Forced Labour specifically prohibits "to make use of any form of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development", which seems to be the case in this situation.

The System of Labor Agreements and Short-Term Contracts

In the Republic of Belarus, workplace relationships are regulated by the Constitution, by the Labor Code and regulatory acts. However, here we must make note of a special feature of Belarusian jurisprudence: under articles 85(3) and 101 of the Constitution, a presidential decree has the force of law, but in a number of cases, a presidential decree takes precedence over laws.[23]

Representatives of independent unions who met with members of the FIDH and HRC Viasna mission said that the main problem in the labor sphere is short-term contracts, which over 90 percent of blue- and white-collar workers were forced to switch to after 2004.

Presidential decree No. 29 dated July 26, 1999 reads: "The signing of contracts with workers whose labor agreements are set for an unlimited period of time shall follow the procedures set forth in labor laws."

In accordance with Regulation No. 1476 on the terms and procedures for the signing of contracts between employers and workers, which was approved by the Council of Ministers on September 25, 1999, "A contract is a labor agreement entered into in writing for a specific timeframe that contains special features in comparison with general labor regulations and specifies minimum compensation for a worsening in the worker's legal situation." In other words, this "worsening" was enshrined in the Regulation from its inception. Clause 10.8 of the Regulation guarantees workers an additional incentive of up to five paid vacation days. At the same time, the employer may use its own funds to set a higher amount of compensation "for worsening in the worker's legal situation."

In accordance with Clause 3.2 of this Regulation, a contract may be entered into with a worker with whom an open-ended labor agreement has already been concluded. In this case, a change in the key terms and conditions of labor—specifically the conclusion of a new contract—shall supposedly be made for warranted production, organizational, or economic reasons, about which the worker must receive written notice no later than one month before the new contract is entered into (Article 25(3) of the Code of Labor Laws of the Republic of Belarus, since 1 January 2000, Article 32 of the Labor Code of the Republic of Belarus). The Decree only actually started to be applied in 2004 and, within the context of the large-scale transfer of workers to the contract system from open-ended labor contracts, was not based on any of the causes listed above in the absolute majority of cases, but instead had the nature of a ubiquitous state company.

22. Human Rights Center Viasna, September 26, 2013: http://spring96.org/ru/news/66099
23. Article 10(3) of Law of the Republic of Belarus No. 361-3 "On Laws and Regulations of the Republic of Belarus" of 10 November 2000.

If a worker refuses to move to a labor contract from an open-ended labor agreement, this worker resigns in accordance with Article 35(5) of the Labor Code (refusal to continue work due to a change in the key terms and conditions of labor) with payment of severance pay in an amount no less than a two-week average wage (Article 48 of the Labor Code). Thus, workers were faced with a choice: continue working under a short-term contract) in most cases for a period of one to three years) or be fired and receive two-weeks' severance pay.

Decree No. 29 put blue- and white-collar workers in a state of extreme dependency on their employers, who began to use it as a convenient tool for the unqualified and groundless dismissal of "undesirable" people. This decree made it possible to renegotiate long-term contracts as short-term contracts (from two to five years) and, in the event of a corresponding decision, to deny extension of a contract without any explanation. Also, initially neither the specific professional nature of certain jobs nor previous work experience and length of service were taken into account. However, in March 2010, the government issued Decree No. 164, which allowed long-term contracts for certain categories of workers, including doctors and teachers. Nevertheless, many teachers and doctors continue to work under the short-term contract system.

In addition to using the new law to resolve disputes of a purely work-related nature by simply firing the undesirable worker at the end of a short-term contract, the state has also started using it for political repression. When Natalya Ilinich, a member of the Belorussian National Front (BNF) and a long-serving teacher at a village school, requested an explanation for why a new contract was not drawn up for her, she received the following response from the school's director: "I will try to explain it to you, even though the law does not require employers to justify firing a worker in connection with a contract's expiration…" He went on to describe Ms. Ilinich as a "top teacher with many years of experience."
As Deputy Prime Minister for Labor and Social Protection Igor Starovoytov also explained: "Labor laws do not contain any obligation for an employer to notify a worker of why their labor relationship is being terminated when a contract is dissolved in connection with its expiration."[24]

In her appeal to the director's decision, Natalya Ilinich recounts how she and five other teachers were summoned to see T.I. Danilevich, head of the Education Department at the Minsk Region Executive Committee on January 15, 2010. "*I should point out that all the teachers summoned that day were members of opposition political parties. All the teachers were accompanied to the Education Department by representatives of their respective local school boards. The only topic T.I. Danilevich and I discussed was my membership in the BNF and my political views and activities. I was given the choice of leaving the party or resigning voluntarily, since membership in an opposition political party is not compatible with working as a teacher in a state school*." At that point, she refused to comply with T.I. Danilevich's illegal and blatantly discriminatory demands and filed a complaint with the Public Prosecutor's Office for Minsk Region. However, in March 2010, this office found no evidence of political discrimination against Ilinich, and in January her contract was simply not extended amidst the wave of political repressions that was taking place in the country at that time.[25]

Legal Analysis

Such short-term contracts system put workers' into extremely precarious conditions. As identified by the ILO, one of the common characteristics of precarious work lies on the "subjective (feeling) characteristics of uncertainty and insecurity. […] It is usually defined by uncertainty as to the duration of employment, […], a lack of access to social protection and benefits usually associated with employment, low pay, and substantial legal and practical obstacles to joining a trade union and bargaining collectively."[26]

24. http://www.rabota.by/news/?p=7453
25. HRC «Viasna», 08.02.2011: http://spring96.org/ru/news/41162
26. ILO, Policies and regulations to combat precarious employment, 2011.

Although there is no specific international instrument protecting from work precariousness, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)[27] has reaffirmed that a variety of ILO instruments do provide some protection for precarious workers.[28]

Furthermore, there are, in cases highlighted above, evident procedures on termination, such as providing justification prior to firing an employee. A dismissal should be done only under valid reasons, it should be fair and alternatives should have been examined.

In relation to Decree no.164, in its 2012 report, CEACR has already requested the government of Belarus to provide in its next report "information on the measures adopted to generate decent jobs with adequate protection, specifying how it has been possible to satisfy the employment needs of the workers whose fixed-term employment contract has ended. It also invites the Government to include in its next report an evaluation of the effectiveness and relevance of the employment policies and measures implemented in terms of the promotion of full and productive employment for the unemployed and other categories of vulnerable workers."[29]

"In reality, this means that employers just have 'to be patient and wait' until short-term contracts end and then just not enter into a new contract," explained an independent union representative to FIDH-HRC Viasna mission members. The situation at the Granit Factory in the southern city of Mikashevichy, one of the largest European producers of macadamia granite, is one such example of a situation where some workers were dismissed at the end of their contracts after attempts to form an independent union[30]. The fact that undesirable workers who have been fired were blacklisted shows how incredibly dependent workers are on their employers and, in a country where production is controlled by the state, how dependent on the arbitrary will of the authorities.

Independent unions also believe that Decree No. 29 contradicts the Labor Code: "In accordance with Article 2 of the Labor Code, the Code's goals are to regulate workplace and other related relationships." Only the Labor Code should include direct effect norms that govern workplace relationships. Government bodies only have jurisdiction over resolving certain specific issues listed in the Code. However, in accordance with Presidential Decree No. 29 "On Additional Measures to Improve Workplace Relationships and Strengthen Labor and Performance Discipline," employers are granted the right to enter into fixed-term contracts with all categories of workers, including with people working under a labor agreement for an unlimited period. It is this right to enter into fixed-term contracts that creates a legal collision between regulations in Article 17 of the Labor Code and Decree No. 29. It nullifies the fundamental principles for regulating workplace relationships, creates an imbalance between the rights and responsibilities of the parties to workplace relationships, and deprives workers of fundamental guarantees and norms listed in the Labor Code. Decree No. 29 and the regulatory acts published in its execution, that regulate the transfer of workers to the contractual form of a labor agreement, have a detrimental effect on the legal situation for workers in comparison with the labor code that is in effect."[31]

In comments made to mission members, Aliaksandr Yarashuk, chairman of the Belarusian Congress of Democratic Trade Unions stressed that "*The International Labor Organization is opposed to disciplinary laws, but Decree No. 29 directly states that it was put into effect 'to strengthen labor discipline.'*" Moreover, short-term contracts reinforce the practice whereby it is relatively easy to find a reason for firing a worker, especially given the state of legal arbitrariness in the country. At the same time, it is almost if not completely impossible for a worker to terminate a contract early at his own initiative or if

27. Once a country has ratified an ILO convention, it is obliged to report regularly on measures it has taken to implement it. The ILO Committee of Experts on the Application of Conventions and Recommendations examines government reports on ratified Conventions. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.
28. ILO, Policies and regulations to combat precarious employment, 2011.
29. Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013) Employment Policy Convention, 1964 (No. 122) - Belarus (Ratification: 1968) http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3057688
30. ITUC, Belarus: Climate for Workers' Rights is Worsening, 24 February 2012, http://www.ituc-csi.org/belarus-climate-for-workers-rights
31. Comments and suggestions from the BCDTU on the draft of the Belarusian law "On Amendments and Additions to Some Laws of the Republic of Belarus on Issues Regulating Labor and Related Relations," 18 November 2010. http://www.bkdp.org/news/1/865/bkdp-p-o-iv-d-eni-p-avovogo-polozheni-d-i-an/

the need arises. According to independent union leaders, there have been plenty of cases where workers who want to quit simply leave their "work record books" (an obligatory way of controlling the working experience and a base of a retreat calculations) at their places of work and move to a higher-paying job, for example in Russia. In these types of cases, workers are then fired for "failure to appear at work without legitimate cause" and deprived of a number of labor guarantees, including the guarantee of a pension that is higher than the social security pension. One independent union leader believes that in this context, short-term contracts can be characterized as *"forced labor, because what they actually do is make it impossible for workers to leave a job at their own initiative."* In accordance with Article 41 of the Labor Code, a worker may request early termination of a fixed-term labor agreement due to an illness or disability that prevents him from completing work under a labor agreement, violation of labor laws and collective bargaining or labor agreements by the employer, and for other legitimate reasons. However, as Deputy Minister for Labor and Social Protection Igor Starovoytov explained, "no list of legitimate reasons is given in any law. The legitimacy of the reason is determined by the employer."[32]

Government officials' position on the Decree No. 9 "On Additional Measures to Develop the Woodworking Industry"

> Belarusian president Alexander Lukashenko demanded full compliance with the decree *"On Additional Measures to Develop the Woodworking Industry"* because he believes that this document will promote the implementation of projects to modernize this branch of industry.
> "*Take everything into your own hands, into your iron fists, and act!"* he stated on a visit to Mogilevdrev OJSC on Thursday.
> The president asked the new company manager if he was pleased with the decree or if he felt there were some nuances that still needed to be worked out. The company's general director answered that he was indeed pleased with the decree.
> Then President Lukashenko said, *"We are trying to reach one main goal: for you to be in charge here, like managers are in charge in the West, for all the workers and specialists to push themselves as hard as possible. Is this decree enough for you to achieve this?"* He received an affirmative reply.
> The president continued: *"Has your drain on workers stopped? You must always remember that they [the workers] do not have the right to quit without your knowledge... Anyone who leaves will come back here for forced labor."*[33]

On December 7, 2012 Lukashenko signed Decree No. 9 "On Additional Measures to Develop the Woodworking Industry." This decree was published[34] "with a goal to increasing the efficiency of using government support measures during the implementation of investment projects to develop the woodworking industry, increase worker discipline, and provide material incentives for workers".

The decree's author—the Committee for State Control—states in its commentary to this decree that the decree provides for concrete measures to strengthen personnel at woodworking companies implementing investment projects with support from the state "until the end of their [the companies'] modernization schedules" with no dates indicated.

The decree presents the procedure for moving to a new type of contract in the following manner: "Contracts entered into with workers at base organizations before Decree No. 9 takes effect shall, upon their expiration, be extended within the bounds of the maximum period of their effect, and when said maximum period has expired, new contracts shall be entered into for the duration of the investment project" (Clause 1.1).

Moreover, during the investment period, workers at the base organization may dissolve their contracts only with the approval of their employers (Clause 1.2).

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32. http://www.rabota.by/news/?p=7453
33. http://www.interfax.by/news/belarus/121961
34. http://www.belta.by/ru/articles/officially?cat_id=1528

Thus, the decree makes it virtually impossible for workers to refuse to enter into or extend their contracts on their own, or to quit under Article 35(5) of the Labor Code, i.e. in the event a worker disagrees with a change in existing work conditions or upon expiration of the contract.

Independent unions and international organizations were sharply critical of the extreme dependence on the employer's will mentioned into the decree. However, another part of the decree passed by almost unnoticed. Clause 1.4 states that "during the time the contract is in effect, workers at base organizations shall receive a monthly payment in an amount set by the employer, in addition to wages set in accordance with the contract, within the timeframes set by base organizations for payment of wages. These monthly payments are not included in the wages themselves." (According to Article 57 of the Labor Code, wages are the sum total of compensation that the employer is obliged to pay the worker for work completed, as well as for periods included in work hours.) At first glance, it would appear that these bonus payments should be welcomed, but in fact Decree No. 9 intentionally does not include material incentives in the form of monthly payments as a part of wages, thus removing these payments from the jurisdiction of the Labor Code. What's worse, these payments become a deciding factor in the worker's de facto "enslavement." This is because Clause 1.5 states that "in accordance with the law, when the contract of a worker with a base organization is dissolved at the initiative of the employer or under circumstances that do not depend on either of the parties, the worker must return the sum total of monthly payments to the employer within one month from the date the contract is dissolved, except in cases where the worker leaves under grounds listed in Article 42(1)(2) and Article 44(1)(2)(5)(6) of the Labor Code of the Republic of Belarus."

In its commentary on the decree, the Committee for State Control writes that: "When a worker is in breach of his obligation to the base organization (for example, early dissolution of the contract due to the worker's actions), in accordance with the decree, the worker shall return the total sum of monthly payments to the appropriate base organization voluntarily or pursuant to a court ruling."

Based on the above, the following situation could occur. A worker spends three years working conscientiously for the benefit of the woodworking industry. Then he takes some sort of action that is subject to disciplinary measures like failing to appear for work without legitimate cause or coming to work in an intoxicated state, and his employer fires him. Based on the position taken in Decree No. 9, this worker must return the monthly payments over a three-year period. This regulation is totally at odds with the labor guarantees set forth in the Labor Code.

The decree further stipulates that "in the event that the worker does not return the monthly payment to the base organization within the timeframe indicated, the base organization shall recover it following the procedures set forth in sub-clause 1.6," which reads as follows: "at the end of the month-long timeframe, the base organization shall file a motion to recover the sum total of monthly payments in summary proceedings, as defined by the Civil Procedural Code of the Republic of Belarus, with the court of law that has jurisdiction over the district of the fired worker's residence." A ruling on the judicial order is issued by the court within a period of three days from the date on which the motion to recover the sum total of monthly payments is received. If the court grants the demands of the base organization, a state fine in the amount of one basic unit is collected from the worker. A person is considered duly notified of the ruling of a judicial order in relation to him to recover the sum total of monthly payments when a notification is sent to his last known address. In other words, the worker is not required to be present in court.

The decree also clarifies that "monitoring of the appearance at work of individuals employed at base organizations shall be carried out by the employer in conjunction with internal affairs agencies." Thus, a worker can be forced to return to a company in accordance with a judicial order and under the supervision of the police. Once he has returned to the company, he will again enter into a contract, but without the additional monthly payments and with recovery of the monthly payments that he has already received.

In practice, human rights defenders and representatives of independent unions who were interviewed during the mission stressed that they were not aware of any specific examples of cases where Decree No. 9 had been applied so far. Some of those interviewed believed that it is possible that company managers realize that there will be social consequences if they apply Decree No. 9 in full, so they have

not yet made use of it. Others stressed that the significant financial dependency written into the decree probably acts as a deterrent for workers at the corresponding companies, who would never even try to end the workplace relationship under these terms.

However, as this report was being prepared for publication, the Belarusian Helsinki Committee notified its authors about the situation of Natalya Ivanova, an employee at FanDok, a company in Babryusk. In her complaint to Petr Mikhailovich Rudnik, chairman of the Mahilyow Oblast Executive Committee, she stated: "I work in Babryusk as a packaging operator in the gluing department of the plywood factory at FanDok OJSC. I previously entered into a labor contract which ends on November 26, 2013. In the future, I do not intend to work any longer at FanDok OJSC. Following the procedures established by law, I notified my employer of my refusal to extend my labor contract, and I also filed a notification of my resignation. My employer, represented by FanDok OJSC General Director Vladimir Vladimirovich Radyukevich, refused my resignation, citing Presidential Decree No. 9 of 7 December 2012 "On Additional Measures to Develop the Woodworking Industry".[35]"

During a press conference held on January 18, 2013, President Lukashenko mentioned the adopted measures: "*I must admit that I may have been harsh with the woodworkers when I signed the decree, which basically prohibits workers, specialists, and managers from quitting, at least until November, when modernization will be complete. But please try to understand me: we have carved out enormous resources from the budget and from banks, we have allocated these funds, we have guaranteed foreign lines of credit for millions, hundreds of millions of dollars, we have purchased equipment. And together with their managers, work collectives have made a mess of this program. And I am not even talking about how great the losses were! So who should be held responsible for this? The government, the minister who is in charge of this (you have seen how harsh the cleanup was), but you are also responsible. You took money—please, give me the company. You will make the company, and then you will leave. But even now no one has announced that they are leaving because, yes, we restrain people from leaving, but we also have to pay them a normal wage, so wages have grown nicely.*"[36]

Legal Analysis

The International Labor Organization's Abolition of Forced Labor Convention (No. 105), which was ratified by Belarus, states that every ILO member that has ratified this Convention undertakes to abolish forced or compulsory labor and not to make use of any form of forced or compulsory labor [...]: b) as a method of mobilizing or using labor for purposes of economic development; c) as a means of labor discipline.

By establishing workplace relationships whereby there is a clear imbalance of power between the worker (as a debtor) and the employer (as a creditor), the application of the Decree could result in debt bondage, one of the key indicators in identifying forced labor. Furthermore, its application would also result in violation of workers' civil and political rights, such as freedom of movement.

Article 13 of the Labor Code reproduces almost word for word the norms stipulated in ILO Convention C105 on the prohibition of forced labor. As defined in article 2, "the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".
ILO Convention C095 "On the Protection of Wages," which was also ratified by Belarus, specifies prohibitions on the use of any wage payment systems that deprive workers of their ability to leave their jobs.

Thus, the provisions of Decree No. 9 "On Additional Measures to Develop the Timber Processing Industry" violate international human rights and labor standards as well as the Constitution of Belarus, the Labor Code, or regulatory acts in Belarus. In effect, it legalizes a form of forced or bonded labor in the country and reinforces a system of additional payments that deprives workers of the ability to leave their jobs.

35. The text of the complaint was presented to the FIDH-HRC Viasna mission by the Belarusian Helsinki Committee.
36. The Belarusian News Agency Belta: http://www.belta.by/ru/all_news/president/Lukashenko-schitaet-dopolnitelnye-mery-po-razvitiju-derevoobrabotki-zhestkimi-no-opravdannymi_i_621033.html

III. The Situation with Unions

> *"The Federation of Trade Unions of Belarus (FTUB) will support current Belarusian president Alexander Lukashenko in the presidential election to be held on December 19, 2010. This decision was adopted unanimously today, November 25, 2010, at an extended session of the Presidium of the Board of the FTUB.*
>
> *"Members of unions that belong to the FTUB vote in elections. This amounts to over four million people, or 95 percent of the workforce. The FTUB represents people who work, people who are building the future of Belarus with their own hands. Behind us stand work collectives, and we bear responsibility for their stability, well-being, and confidence in tomorrow. This is why our choice of current president Alexander Lukashenko is clear".*
> Leonid Kozik, chairman of the Federation of Trade Unions of Belarus, in a speech during the meeting of the Presidium.[37]
>
> "*The Federation of Trade Unions supports Lukashenko's candidacy for president and is prepared to collect the number of signatures needed to move his candidacy forward. This statement received the support of all the participants in the conference, who also unanimously voted to elect Alexander Lukashenko as a delegate to the VIth FTUB Congress.*"[38]
> Leonid Kozik, chairman of the Federation of Trade Unions of Belarus.[39]

The situation with unions in Belarus strongly resembles the situation in the USSR, where the All-Union Central Council of Trade Unions existed under the strict control of the state and the ruling communist party, with the functions and authorities of union organizations determined in accordance with the tasks assigned to them by the state and the party. Union membership was compulsory and widespread for workers, university students, students at professional schools, and retirees.[40]

The Federation of Trade Unions of Belarus (FTUB) was formed in 1990 at the XVII Congress of Unions of Belarus, which pronounced itself the Ist Congress of the FTUB and adopted the FTUB by laws.

The FTUB united 28 industry-specific unions, six regional union associations, and one municipal union association. Its membership numbers over four million people.[41]

Under the Belarusian regime's social policies, which independent Belarusian unions classify as "a neo-Soviet social regime," unions were again assigned the function of carriers of government policies. Independent unions that did not want to become a part of the FTUB system have faced (and continue to face) severe limitations on their activities and even the dismantling of their existing structures.

The Belarusian Constitution recognizes freedom of association. Article 36 reads: "Each person shall have the right to freedom of association." However, in practice the ability of associations and unions to register has been singularly impeded by bureaucratic rules, demands that are extremely difficult to implement, and, most importantly, hurdles set up by government bodies. The government has used and continues to use any pretext it can to deny state registration or the use of premises or a "legal address"

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37. http://www.fpb.by/ru/menu_left/news/?id=4137 11.25.2010 FTUB press service
38. http://www.fpb.by/ru/menu_left/news/?id=3516 06.23.2010 FTUB press service
39. http://www.fpb.by/ru/menu_left/news/?id=4137 11.25.2010 FTUB press service
40. http://perc.ituc-csi.org/Razvitie-demokratii-i-prava?lang=ru
41. FTUB: http://www.fpb.by/en/menu_left/about

(see below) to independent trade unions. The authorities are constantly interfering in union activities, preventing their normal operation, firing active union members and leaders, and forcing rank-and-file members to leave independent unions and move to the state-controlled FTUB under threats of dismissal or refusal to enter into or extend labor contracts.

The history of the Belarusian Congress of Democratic Trade Unions (BCDTU), which was founded in 1993 as a merger between the Belarusian Independent Union of Mineworkers and the Belarusian Free Trade Union and was registered by the Ministry of Justice on December 13, 1993, is typical of the situation with unions. In early 1996, the Ministry of Justice demanded that these unions undergo reregistration, which is in violation of the law "On Trade Unions" and ILO Convention C087. Then the Ministry of Justice proceeded to deny the BCDTU reregistration, essentially carrying out a direct order from President Lukashenko.

Because they found themselves in a situation where their organization's legal activities had essentially been prohibited, leaders of the Congress decided to hold a new constituent assembly by expanding the composition of its founders. The BCDTU submitted registration documents within the timeframe established by law, but the Ministry of Justice blocked the registration process and demanded that the Belarusian Free Trade Union remove itself from the list of founders. The Ministry of Justice based its demand on the fact that BFTU activities had been suspended by Presidential Order No. 336 dated August 21, 1995, which was issued in connection with a strike on the Minsk Metro that took place that same month. The Constitutional Court of the Republic of Belarus twice found that the part of the order relating to the BCDTU does not conform to the Belarusian Constitution, but the Ministry of Justice did not respond to the BCDTU's numerous and persistent demands to resolve the registration issue that the union began making in October 1996. In May 1997, the BCDTU received an official refusal of registration from the Ministry of Justice. Fighting for the legality of its existence, the BCDTU filed a complaint regarding the actions of the Ministry of Justice with the Supreme Court of the Republic of Belarus, but the complaint was shelved. The BCDTU finally received its certificate of registration thanks to the full support of colleagues abroad. The BCDTU currently has a membership of approximately 10,000 workers. The BCDTU has been a member of the International Trade Union Confederation since December 2003.

In a conversation with the FIDH-HRC Viasna mission, BCDTU chairman Aliaksandr Yarashuk noted that while the Federation of Trade Unions states that 98 percent of workers are members, only 40 percent of workers surveyed state that they belong to a union. In practice, workers are formally registered with the FTUB before they are hired. Yarashuk noted that *"Our relationship with the state is basically through the ILO, which is very focused on Belarus due to repressions taken against independent unions, particularly over the past two years."* Due to the current situation, workers do not advertise their membership in independent unions, and some independent unions permit dual memberships — a "formal" membership in the FTUB and an "unspoken" membership in an independent union.

On January 26, 1999, the president issued Decree No. 2 "On Some Measures to Regulate the Activities of Political Parties, Trade Unions, and Other Non-governmental Organizations," which placed severe restrictions on the ability to form or register trade unions. In accordance with the norms in the decree, organizations that have not been registered or reregistered may not operate in Belarus and are subject to liquidation. Also, the number of members needed to form various levels of trade unions was raised.

As mentioned above, Presidential Decree No. 29, "On Additional Measures to Improve Workplace Relationships and Strengthen Labor and Performance Discipline," was adopted on July 26, 1999, even though it contradicts the Labor Code. Beginning in 2004, most workers in Belarus were switched to short-term labor agreements. This became a simple and effective method for fighting the creation of unions as union activists and members of unions that were troublesome to the employer found themselves on the other side of the company's gates as soon as the term of their labor agreements expired. Representatives of the BCDTU and the Radio and Electronics Workers' Union who met with the FIDH mission gave dozens of examples, many of which were also sent to the ILO in support of the complaint No. 2090 related to the government's violation of C087 and C098 on the Right to Organize and Collective Bargaining.

Belarusian unions filed a complaint on violation of union rights with the ILO Committee on Freedom of Association for the first time in 1995. It was at this time that the BFTU and the BCDTU, with support from the International Confederation of Free Trade Unions (ICFTU)[42] and the World Confederation of Labor (WCL), filed a complaint reporting the introduction of strict limitations on exercising the right to strike, the suspension of union activities on the basis of a presidential order, serious acts of anti-union discrimination, and the arrests and detentions of union activists during strikes held in Minsk and Homiel in August 1995 (Case No. 1849).

The second complaint was filed with the ICFTU in 1996. It addressed incidents where union workers from the Polish union Solidarity were expelled from the country during their visit to FTUB, union leaders were issued summonses to appear in court for participating in a union meeting, and FTUB was regularly receiving threats to cease its activities or be shut down (Case No. 1885). Despite an appeal from the ILO Committee on Freedom of Association, the government did not respond to the petitioner's complaint and the Committee was forced to review the case without commentary from the government.

The situation deteriorated even further in the early 2000s after the president issued Decree No. 2, "On Some Measures to Regulate the Activities of Political Parties, Trade Unions, and Other Non-governmental Organizations," on January 26, 1999, which compelled all unions and union associations to undergo reregistration. On the basis of this decree, the Ministry of Justice approved rules for processing and reviewing documents presented for state registration. These acts required that many documents be presented for registration, established a complicated procedure for registering unions, and gave a wide-ranging list of grounds for denial of registration. Some of the documents required included proof of legal address (*lease or letter of guarantee from the company head (director))*. Given the state's current monopoly in Belarus, this measure is as simple and effective a means of control as the contractual system because no company director will ever dare to present the legal address of a primary level trade union organization. Directors have refused to give these letters to many unions, so these unions were unable to undergo reregistration. Also, unions have been denied reregistration under contrived grounds, or the process has been openly narrowed down to the question of their independence. For example, the Belarusian Independent Association of Industrial Trade Unions (BIAITU) was denied registration "since the association includes unions that represent and protect the rights and legal interests of their members." The Supreme Court of the Republic of Belarus found this decision to be legal.[43]

Article 2(3) of Decree No. 2 also sets high requirements for union membership: republican trade unions require no less than 500 founding members, representing the major number of regions of the Republic of Belarus and Minsk; territorial trade unions require no less than 500 founding members, representing most administrative and territorial units of the respective territory; trade unions at enterprises, offices, organizations and in other places of work require no less than 10 per cent of workers of the overall number at the relevant enterprise, office and organization, but no less than ten people. These requirements make the creation of new republican and territorial trade union organizations practically impossible and limit the chances of creation of trade unions at large enterprises.

The Labor Code took effect on January 1, 2000. This code changed provisions on collective bargaining, collective labor disputes, and strikes, making the latter impossible. At the same time, the president had the right to defer or suspend strikes, but not for longer than a three-month period.[44] Also, a prohibition on any interference that might limit the rights of unions or impede exercising of these rights (Article 3(1)) was removed from the law "On Trade Unions, their Rights, and Guarantees of their Activities." The Ministry of Justice registered NGOs only upon the recommendation of a republic-wide commission, which included representatives from the Ministry of Internal Affairs, the Tax Inspectorate, the Religious Affairs Committee, the Security Council, the Ministry of Justice, and the head of the Department of Presidential Affairs. The KGB took over the job of monitoring union activities, and the govern-

42. The ICFTU and the WCL are predecessors of the International Trade Union Condeferaton (ITUC) which represents 176 million workers in 161 countries and territories and has 325 national affiliates including BCDTU.

43. http://perc.ituc-csi.org/Razvitie-demokratii-i-prava?lang=en

44. Official internet portal of the President of the Republic of Belarus: http://president.gov.by/press23722.html

ment, unable to stop at neutralizing critical voices, demanded that trade unions actively support the government's course.

Representatives and members of independent trade union organizations started meeting more frequently with discrimination, pressure, failure to extend contracts, denial of employment at the end of a term of office for elected union positions, etc.

On June 16, 2000, the Belarus Automobile and Agricultural Machinery Workers' Union, the Radio and Electronics Workers' Union, the Belarusian Free Trade Union, and the Belarusian Congress of Democratic Trade Unions filed a complaint with the ILO Committee on Freedom of Association regarding violation by the Republic of Belarus of the fundamental principles promulgated in ILO conventions C087 and C098 (Case No. 2090).

In its Report No. 324 issued in March 2001, the Committee on Freedom of Association found that Decree No. 2 is a serious breach of the principles of freedom of association and proposed that the government exclude trade unions from its jurisdiction and lift limitations related to "legal address". The Committee indicated that acts of government interference in trade union activities are not permissible and asked the government to present information on eliminating violations in relation to specific trade union organizations and their leaders, who were mentioned in the complaint.

The Committee on Freedom of Association reviewed Case No. 2090 seven times over the course of 2000 – 2003.[45] The Committee called on the Government of Belarus to make changes in the national legislation to ensure that the principles of freedom of association are observed, specifically in provisions on trade union registration, membership requirements, international financial assistance, collective bargaining, the right to strike, hold meetings, street processions, demonstrations and other collective actions, and also conduct investigations into cases mentioned in the complaint and later attached to it. During review of this case, more and more evidence of violations of freedom of association came to light, while the Government of Belarus took no action to implement any of the Committee's recommendations.

At the same time, presidential decrees and orders have narrowed the field for civil society and, accordingly, for unions, to express public opinion. On March 12, 2001, the president published Decree No. 8 (which was later complemented by Decree No. 24 dated November 28, 2003), which makes it impossible for NGOs, including unions, to receive any assistance from foreign organizations. Presidential Decree No. 11 on holding meetings, street processions, demonstrations and other collective actions, issued on May 7, 2001, made it virtually impossible to hold any of these events. Later Decree No. 11 was revoked and its provisions were toughened by changes made to the law "On Large-Scale Actions in the Republic of Belarus."

At the 89th International Labor Conference in June 2001, the Committee on the Application of Standards devoted a special paragraph to Belarus in the conference report. This procedure is allowed in cases of serious, systematic violations of labor rights, including those provided for by fundamental labor standards. The Committee on Freedom of Association discussed the situation in Belarus again in November 2002 and noted in Report No. 329 that "a serious deterioration in the respect of trade union rights has occurred in the country" and "notes with deep alarm that since the submission of this complaint in 2000, it has not been able to note any progress towards the implementation of its recommendations."
After the Committee on the Application of Standards again included a separate paragraph on the case of Belarus in connection with the country's failure to follow recommendations and emphasized the Belarusian government's continuing refusal to implement C087 at its 91st session in June 2003, 14 delegates representing workers filed a complaint in accordance with Article 26 of the ILO constitution, asserting the need to create a Commission of Inquiry[46] to verify Belarus's compliance with C087,

45. See CFA reports nos. 324, 325, 326, 329, 330, 331, 332
46. A Commission of Inquiry is the ILO's highest-level investigative procedure; it is generally set up when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 11 Commissions of Inquiry have been established.

the Freedom of Association and Protection of the Right to Organize Convention, and C098 Right to Organize and Collective Bargaining Convention. On the basis of this complaint and in accordance with ILO procedures, a decision was adopted at the 288th Session of the ILO Administrative Tribunal in November 2003 to create a Commission of Inquiry on the basis of Article 26 of the ILO Constitution.

The final report of the Commission of Inquiry on Violations of Trade Union Rights[47] was adopted at the third session in July 2004, and was presented at a session of the ILO Administrative Tribunal in November 2004. This report is almost 200 pages long. The Commission paid particular attention to the requirement to provide a legal address, which is obligatory to registrate a trade union or an organizational structure, that "amounts to a condition of previous authorization for the formation of a union contrary to the right of workers to form and join organizations of their own choosing without previous authorization provided for in Article 2 of Convention No. 87."[48] The report makes 12 recommendations for immediate action and demands that decrees Nos. 2, 24, and 11 be reviewed immediately and that changes be made to them.

In January 2003, the ICFTU, the European Trade Union Confederation (ETUC), and the WCL informed the European Commission of violations of freedom of association in Belarus. The EC decided that there were grounds for investigation and approved a decision to create an appropriate committee. EC experts leading the independent investigation concluded that Belarus has committed numerous and varied violations of trade union rights, which can be characterized as nothing less than serious and systematic violations of the most fundamental rights in the area of freedom of association.

On August 17, 2005, the EC adopted a decision to carry out monitoring and assessments in Belarus within six months. If within this period the government of Belarus failed to demonstrate its readiness to take actions toward implementing the recommendations issued by the ILO Commission of Inquiry in 2004, then the Commission would submit a proposal to deprive Belarus of trade preferences to the Council of the European Union.

Since the EC did not observe any significant steps on the part of Belarus to correct the situation after the end of the six-month period, it adopted a decision to cut trade preferences for Belarus.

The Belarusian Congress of Independent Trade Unions (BCITU) notes that after the country was deprived of trade preferences, the Government of Belarus officially changed its position. The government stated that it had included all unions, and not just the FTUB, in the social dialogue; was operating a trilateral council to improve legislation in the social and labor spheres under the auspices of the Ministry of Labor and social security of the Republic of Belarus, which included BCITU representatives; had reviewed trade union registration issues under the law and found that 22,000 trade union organizations and two trade union associations were registered; was tracking employer observance of trade union rights; and was holding collective bargaining at the national, industry-wide, and local levels, as well as at the enterprise level. On February 20, 2009, the state approved an action plan to implement the recommendations made by the Commission of Inquiry and, in the opinion of the government itself, the country "has achieved significant progress in regard to observance of the principles of freedom of association." The state also took actions to restore the rights of several specific primary level trade union organizations that figured in the complaint.

However, although the Commission of Inquiry recommended changes, none were ever made to Presidential Decree No. 2, which relates to trade union registration, the Law on Mass Demonstrations, or Presidential Decree No. 24, which relates to the receipt and use of free foreign assistance. The Council to improve laws in the social and labor sphere, which was created in January 2009 as an instrument to implement the country's obligations to carry out the ILO recommendations, eliminate violations of trade union rights, and, with these goals in mind, improve labor and trade union laws,

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47. Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine Observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). http://www.ilo.org/public/english/standards/relm/gb/docs/gb291/pdf/ci-belarus.pdf
48. Ibid, pgs. 165 – 166.

does not actually perform these functions. Also, the government has not ended the exceptionally repressive practice of issuing harsh punishments to workers for any attempt to defend their rights on their own.

According to the World Confederation of Labor (WCL) and ITUC, the Belarusian government has only fully implemented two of the recommendations made by the Commission of Inquiry (3 and 11) and partly implemented recommendations 1 and 4.[49]

– the BCDTU was restored as a member of the National Council on Labor and Social Issues and was a party to the development and signing of the general agreement between the Government, employers' associations, and trade unions in 2009 – 2010;
– the Republican Registration Commission was dissolved;
– individual trade union organizations that make up the BCDTU and the REWU were registered;
– a short excerpt from the report issued by the Commission of Inquiry was published in the journal of the Ministry of Health and Social Development in 2005 and in the newspaper *Respublika*, however, the form of publication, the circulation, and the form of distribution ensured a small audience that would not be able to understand the contents or ideas behind the recommendations.

Persistent evidence of worker persecution, forced withdrawal from unions, refusals to register and file papers for primary level trade union organizations, and bans on union meetings, street processions, demonstrations and other collective actions show that Belarus has made virtually no progress in implementing the ILO recommendations. The country has not made any changes to any laws and, the contrary, is adopting new regulations that limit trade union rights. Moreover, according to BCDTU chairman Aliaksandr Yarashuk, ten of the 70 people to testify before the Commission were later dismissed from their jobs. Also, the positive measures that the government has taken in response to the complaints reviewed by the ILC are usually of a cosmetic nature: for example, in the spring of 2009 Aleksey Gabriel, chairman of the primary level union organization Novolukom State District Power Station was reinstated to his job by a judicial decision in a BCDTU lawsuit, which the government reported at the ILC conference. However, this decision was revoked upon review and Gabriel was again dismissed from his job.

The FIDH-HRC Viasna mission was given numerous materials related to discrimination against workers who are active in independent trade unions. For example, for several years members of the BFTU were subjected to direct and indirect pressure from managers at Babruysk Tractor Parts and Assemblies Plant Republican Unitary Enterprise (BTPAP).

The administration of BTPAP illegally deprived the primary level trade union BFTU of a union office and refused to provide it with premises in accordance with the collective bargaining agreement. No "legal address" – no trade union. Furthermore, Mikhail Kovalkov, head of the BTPAP, was physically not allowed to enter company grounds for a period of over eight months. The Babruysk Municipal and District Court found that this treatment amounted to discrimination due to union membership and ordered the company's administration to unfreeze his permanent pass. Thus, Mr. Kovalkov was allowed to enter company grounds, but only under constant escort of security personnel. Remaining BFTU members are being pressured to leave a number of unions and threatened with the dissolution of their contracts at the end of the contract timeframe. BFTU members have also been deprived of the chance to use the factory's gym, to which all members of the FTUB have access. Moreover, BTPAP has basically excluded the BFTU from the process of collective bargaining to conclude a new collective agreement by putting forth unfounded demands for workers to present grounds for representation.

Aliaksandr Yarashuk, chairman of the BFTU and vice-president of the ITUC, told the FIDH mission that Polotsk Fiberglass OJSC has been exerting constant pressure on BFTU members. The company is also trying to force BFTU members to leave the organization. Meanwhile, the union itself has been virtually excluded from the process of collective bargaining to conclude a new collective agreement, and changes that discriminate against BFTU members were made to the existing collective agreement in late 2012. Throughout 2012, disciplinary action was taken against Viktor Stukov, chairman of the BFTU council

49. http://perc.ituc-csi.org/Razvitie-demokratii-i-prava?lang=en

for workers at Polotsk Fiberglass OJSC, many times under contrived grounds, and on March 11, 2013, he was fired for alleged systematic failure to fulfill his work obligations after serving 29 years as an operator of machinery to create continuous fiberglass. Under a decision issued by the Polotsk Municipal and District Court dated April 16, 2013, Mr. Stukov's claims in his suit against Polotsk Fiberglass OJSC and his requests for recovery of his average wages for his forced absence, collection of bonuses for February 2013, and compensation for mental anguish were all denied.

Even Aliaksandr Yarashuk himself was not allowed to attend sessions of the National Council on Labor and Social Issues for one and a half years.

The FIDH-HRC Viasna mission was also able to interview Gennady Fedynich, chairman of REWU (REP as in its Russian abbreviation). According to him, this union has almost 2,000 members whose names are not advertised due to fear of repressions against them. "*Just the very fact of belonging to our union is connected with danger of losing your job. The company simply will not enter into new contracts with members of our union*," Mr. Fedynich explained. He also said that right after REWU left the official FTUB trade-union in 2003, the public prosecutor's office launched checks that lasted for nine months. Many workers were forced to leave the union. The situation worsened after the 2010 presidential election, when civil society found itself steamrolled by unprecedented repressions. During a search of the union of January 14, 2011, the authorities confiscated almost all the union's computers, which were later returned in non-working condition. But union leadership was far more concerned that with the confiscation of the computers many names of its members became known to security agencies and individuals in charge of ideological work with workers.

The Situation at Granit Unitary Manufacturing Enterprise

Members of the FIDH and HRC Viasna mission traveled to Mikashevichy in southern Belarus to learn about the situation surrounding attempts to found an independent trade union at the Granit Republican Unitary Manufacturing Enterprise. The FIDH-HRC Viasna mission met with the group of Granit workers who were behind the creation of an independent trade union.

Granit is one of the largest producers of building materials, primarily macadamia granite, in Europe. Three thousand two hundred people work at this enterprise. At the end of 2011, workers there decided to establish an alternative and independent trade union to protest low wages, the contemptuous and degrading attitude of the management towards workers, and the inaction of the official trade union. On 24 December 2011, workers held a constituent assembly establishing a primary trade union organization of the Belarusian Independent Trade Union (BITU) in accordance with the BITU bylaws. Mr. Oleg Stakhaevich, a driver, was elected President of the primary trade union.

> He told the FIDH and HRC Viasna mission*: "On December 24, 2011, the guys and I decided that we had to organize on our own. This was at the very height of the crisis: devaluation, etc. At one point we were making up to $1000, but now we were barely able to make $300 - $350. We wrote a statement cancelling our membership in the republican union, met with representatives of Belarusian Independant Trade Union (BITU), and held a constituent assembly. Their leaders immediately informed Granit management of this and asked that an office be allocated to us. Lots of workers came to the constituent assembly. Everyone was notified in advance that the meeting would be held at the local House of Culture, but KGB officers were already watching over the House of Culture itself and the area surrounding it. We knew this would happen, so we brought people together and left to hold the meeting in a village. Immediately after this, we started looking for an office so that we could register, since company management categorically refused to provide us with one. We made several inquiries to which we received unfounded responses that it would not be possible to rent us any space. Many owners of private buildings first agreed to rent us office space, but then withdrew their offers since, as we learned later, Sumar, the chairman of the Brest District executive committee, prohibited all agencies and private individuals from renting us space."*[50]

In response to BITU's request, the union received a letter dated January 24, 2012, in which the manage-

50. Interview with the FIDH-HRC Viasna mission.

ment of the company refused to consider the issue because the trade union had allegedly failed to provide the complete set of documents concerning the establishment of the primary organization. The BITU sent another written request for a legal address in which it stated that the actions of the management were illegal. It received a reply dated February 2, 2012, which contained obscure explanations and demonstrated that the employer did not intend to provide the organization with a legal address. The BDTU confirmed to the mission that it was very difficult to find other places in Mikashevichy where it could obtain a legal address. Its only option was to ask the employer, since all commercial landlords refused to rent office space to BITU in fear that local authorities would put pressure on them and interfere with their commercial activities. Immediately following the constituent assembly, the "Granit" management, local authorities, the Ministry of Internal Affairs and the Committee for State Security (KGB) launched a massive campaign to obstruct the organization's activities and to persecute its members and leadership.

The local branch of the State Automobile Inspectorate issued an unfounded decision suspending Mr. Stakhaevich's driving license for a period of six months, accusing him of causing an accident. However, this accident was not confirmed by any witnesses. Following the court's decision to suspend Mr. Stakhaevich's license, the management of the company began a procedure for his dismissal. His employment contract was terminated under Article 42(3) of the Labor Code which regulates the situation where an employee "is not suitable for carrying out the duties for which he or she was hired owing to insufficient qualification preventing him or her from continuing to perform such duties." Since the suspension of his license meant that he could not go to work, Mr. Stakhaevich requested to be transferred to the position of category VI assistant drill operator but was nevertheless dismissed.

> *"On January 10, they started 'purging' us from company premises. I was listed as chairman of the trade union, so apparently I was one of the first on the list. I worked as the driver of a Belaz car. On January 14, the police called me at home and asked me to come in for 'a talk.' At the police station I was told that an administrative case had been opened against me because I had allegedly created a dangerous situation on the road when I had not yielded to a pedestrian in a crosswalk. I know for a fact that nothing like this ever happened: I had been driving very carefully at that time because I feared provocations on the part of management. A video that was included in the case file as proof of my guilt shows my car approaching a crosswalk, stopping to allow a person to cross, and then, as if some frames were removed, my car goes on moving next to the pedestrian. That pedestrian did not have a camera on him, and the video was taken from several different angles, so I am convinced that this was just a typical, ordinary provocation, the goal of which was to open a case against me and dismiss me from work "under an article" and not for my union activities. Moreover, officials from the public prosecutor's office said during the trial that the victim of my 'accident' had disappeared and, in light of this, could not participate in the proceedings. The judges ignored all my arguments, so I was fined and my driving license was confiscated.*
>
> *"On February 16, the day of my dismissal, I filed a request for transfer to the position of drill operator. It was accepted and I was told to come to work the very next day. When I arrived at work on the 17th, I was met by security guards and a company lawyer, who told me that I was being dismissed and gave me the chance to read through the order for my dismissal. This order was not drawn up the way it usually is, and it was not even stamped. I immediately started calling my colleagues from BITU to ask them to help me figure out this misunderstanding. After speaking with the BITU chairman, the lawyer could not give me a response and asked me to come on February 20 to familiarize myself with the order. When I arrived that day, I was met by police officers. The order had already been drawn up, this time in the correct way."*[51]

The BCDTU filed a lawsuit with the Luninets District Court in Brest Region on behalf of Mr. Stakhaevich against the company to have the union's President reinstated, to recover the wages lost during his forced absence, and to oblige the company to transfer him. On April 11, 2012, the court ruled against the claims made on behalf of Mr. Stakhaevich. On May 31, 2012, the judicial board for civil cases of the Brest Regional Court upheld the original ruling of the Luninets District Court and dismissed the cassation appeal filed by the BCDTU.

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51. Interview with the FIDH-HRC Viasna mission

The company has also dismissed, on false pretexts, Mr. Karyshev, vice president of the organization, and Mr. Pavlovsky, a member of its executive board. The Luninets District Court ruled against their reinstatement. On June 8, 2012, Mr. Pashechko, a member of the BITU, testified in Luninets District Court in Mr. Karyshev's reinstatement case. Following the court case, the department foreman, openly and in the presence of witnesses, swore that Mr. Pashechko would also soon lose his job. On June 22, 2012, Mr. Pashechko arrived at work to discover that he had been dismissed under Article 42(4) of the Labor Code for systematic failure to perform duties without a valid reason. Mr. Pashechko worked at the company for nine years, and no complaints were ever received against him. According to the CDTU, the dismissal of the BITU member took place in the most flagrant violation of labor legislation.[52]

> *"We gave the company an application to register the trade union that was signed by 28 people. This application later went through the Public Prosecutor's Office and the KGB. Everyone whose signature was on the application received a call to come "for a talk", and there were demands for everyone to retract their signatures. Foremen immediately started writing reports for managers on the workers who cooperated with us. The reports stated that these workers were 'breaking up the collective'",* specified the workers met.

> *"One colleague of mine was fired in May for regular failure to perform work obligations, but all the violations were dated for the previous year, so, in theory, he should have been dismissed at that time. But he was not reinstated even after appealing to the labor inspectorate. All said, from January 10 through May, eight employees were dismissed: six activists and two wives of activists."*[53]

The names of those dismissed include Oleg Stakhaevich, Nikolai and Margarita Karyshev, Gennady Pavlovsky, Vitaly Pashechko, Ludmila and Anatoly Litvinko, and Leonid Dubonosov. These people and their spouses have been virtually unable to find work in small towns like Mikashevichy (pop. 14,000), or, for that matter, anywhere else in Belarus, and have been forced to travel outside Belarus for jobs.

> *"The wife of one of our members was not even hired by Granit for an unpaid internship after taking classes. She went to the company, which was looking for specialists in her area, but when they learned that she was the wife of a union member, they said that they had already found another worker and did not need her services.*
> *Now none of us can find a job here in Mikashevichy. Apparently an unspoken order was issued from above stating that we should not be hired anywhere. One of us registered as a self-employed person, and another one of us works at construction sites in Russia and Poland. Basically, we're all just trying to get by as best as we can."*[54]

Concerned by the union activity at the company and the show of solidarity displayed by many workers, the authorities took certain steps to improve the situation: the general director and deputy general director for ideology (this position exists at every state enterprise and organs of power) were fired and, most importantly, wages were raised for certain categories of workers. At the same time, however, many members of the independent trade union signed up for FTUB under pressure from the authorities.

Workers have shown material and other support for the union leaders who have found themselves in a difficult situation and for the unregistered trade union itself, but they do not advertise their support for fear of further repressions. Some further contacts showed how dangerous can be any communications with the fired activists : *"On April 1, female workers at Spetszhelezobeton, LLC started to express their outrage over their low wages. They asked us for help in June, and we had several meetings. Immediately after this, they were dismissed from the company, and now none of them can find a job, because they will not be hired without an explanation of their dismissal."*[55]

52. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193261.pdf, pgs. 3-5.
53. Interview with the FIDH-HRC Viasna mission
54. Interview with the FIDH-HRC Viasna mission
55. Interview with the FIDH-HRC Viasna mission

Despite the price that independent trade union leaders at Granit have paid for their actions, these actions were supported by hundreds of workers and did lead to some kind of result that was recognized by official structures. The FTUB's official website sums up this epic in the following way: "In connection with the treatment of workers at Granit, Alexander Lukashenko ordered the formation of a working group at FTUB, and specialists on the staff of the FTUB board monitored wages and the employee compensation plan at Granit… Following joint consultations between FTUB representatives, local authorities, and interested ministries, fundamental changes were made to the company's employee compensation plan… It should be added that union analysts who are able to propose reasonable demands to employers must play a major role in cases like this. And this is exactly what happened at Granit after FTUB got involved. At the same time, however, we should note that so-called alternative trade unions like the BCDTU have not done anything for people. Their 'work' has only resulted in noise, lies, and letters to the ILO."[56]

Unfortunately, the situation with trade union registration is also difficult in the private sector. However, the FIDH- HRC Viasna mission could not add this issue to its already wide-ranging investigation, and some of the experts the mission met with agreed that this problem deserves its own special investigation. As REWU member Andrey Strizhak explains, *"The multinational companies with the strongest anti-union tendencies are Coca-Cola and McDonald's. The former has a high rate of turnover, so it is highly difficult to create a trade union there. Coca-Cola tries to work proactively, with a message that they can settle problems without the trade unions. But we have not had a great deal of success with our efforts to break into private companies in Belarus. And of course it is another matter that people at private companies have greater opportunities to express their objections and achieve positive changes than in the State ones."*[57] However, BCDTU chairman Aliaksandr Yarashuk noted that *"We know that one man took the initiative to create a trade union at Coca-Cola and he was fired within three days."*[58]

As highlighted in this report, the rights to organise and to collective bargaining have been severely violated over the past two decades. The acts and omissions the government makes through its laws, procedural obstacles, and practices (as far as the private sector is concerned) are tantamount to a breach of Belarus' national and international obligations.

In addition, cases discussed in this section are examples of grave violations of civil and political rights as a result of union-related activities, either made or encouraged by public authorities. These include alleged fabrication of evidence against workers and measures to intimidate and take retaliation against union leaders' relatives, etc. Such practices constitute clear violations of civil and political rights, such as the right to be equal before the law, and the failure to respect minimum guarantees in relation to due process.

Through their direct interference, public authorities fail to fulfill their obligation to respect such rights. Furthermore, by allowing third parties (in this case private employers) to violate the right to form a union and to collective bargaining, authorities fail in their obligation to protect employees from such violations.

Affected individuals end up being denied their right to work because it is impossible for them to find new jobs due to their unjustified dismissals or relationships with union leaders. Thus, their right to an adequate standard of living, as protected under the ICESCR, is affected as they struggle to feed themselves and their families.

56. http://www.fpb.by/ru/menu_left/news?id=6709
57. http://euroradio.fm/ru/i-pri-kapitalizme-i-pri-gosudarstvennom-socializme-profsoyuzam-tyazhelo-sushchestvovat
58. Interview by FIDH and HRC Viasna.

IV. Forced Labor

The FIDH and HRC Viasna mission was able to confirm that bonded and forced labor or "voluntary forced" labor (an oxymoron that has endured since it entered everyday Soviet life) is used extensively and routinely throughout Belarus and affects an incredibly wide range of groups. A large part of the population appears to have, at some point, met directly or indirectly with compulsory or forced labor in one or several of the abovementioned categories.

The Use of Unpaid Labor from Enlisted Personnel

As Hary Pahaniayla, a lawyer at the Belarusian Helsinki Committee, explained to FIDH-Viasna mission members, in the law "On Military Duty and Military Service" (as amended on July 20, 2007), military service is understood as the main type of service in the military involving the direct execution of military duties by citizens enlisted in the Armed Forces and other military formations (civic duty to defend the Republic of Belarus). Nevertheless, according to Article 10 of the law "On the Status of Enlisted Personnel" (as amended in No. 100-3 on January 4, 2010), it is permissible to "use enlisted personnel for the performance of work and other duties not specific to military service in cases stipulated by regulatory acts."

As the Belarusian Helsinki Committee stresses in its analysis of the use of conscript labor,[59] similar standards were also introduced for the transport troops of the Republic of Belarus. According to Point 20 of the Regulation of Transport Troops of the Republic of Belarus, confirmed by Presidential Decree No. 312 dated May 10, 2006 (hereinafter, the Regulation), the transport troops may perform, for a fee, work (services) and other contractual obligations following the procedures specified by the laws of the Republic of Belarus. The procedures and terms for the organization of the provision of paid services and the use of enlisted personnel for work not specific to military service are defined in Order No. 553 "On the Adoption of the Framework for Providing Paid Services in the Armed Forces," issued by the minister of defense of the Republic of Belarus on June 29, 2007. According to Point 13 of Annex No. 2 to the Order, transport troops are allowed to perform, for a fee, construction and installation work carried out by structural subdivisions under commercial contracts with a business entity.

Army conscripts are sent to work in accordance with an order issued by the commanding officer of the military unit and they do not perform this work on a voluntary basis, but instead under fear of punishment for failure to carry out the order. It is of particular importance that payment for their work performing construction and other types of work (services) is not provided for by the laws of the Republic of Belarus. After reimbursement is made for expenses related to the performance of work and mandatory payments are made to the state, funds earned in this way are used by the Ministry of Defense for "specific goals," including improving facilities for the troops and other budget allocations, and not for paying conscripts for their labor.

The official portal of the Belarusian Ministry of Defense reported in early August 2013 that, *"beginning July 29, in order to provide assistance collecting the 2013 harvest to agricultural organizations, the Armed Forces formed multiple automobile platoons at the bases of the 147th air defense missile brigade of the Air Force and the Air Defense Forces, the 120th independent infantry brigade of the Northwestern Operational Command, and the 36th road and bridge brigade of the Logistics Department. Currently staff on the combined automobile platoons are assisting in the transportation of grain from fields in the Minsk and Starodorzhsky districts of Minsk Region, the Mstislavsky and Chaussky districts of Mahilyow Region, and the Homiel and Buda-Koshelevsky districts of Homiel Region. A total of over*

59. Belarusian Helsinki Committee, Expert Opinion on the Issue Forced Labor in the Republic of Belarus, 2009: http://belhelcom.org/en/node/13018

130 enlisted personnel and 70 pieces of automotive equipment were offered to agricultural companies. As of today, over 5,000 tons of grain have been transported."[60]

Later this topic is further clarified: *"In order to provide assistance collecting the harvest to agricultural organizations, combined automobile platoons at the base of the 120th independent infantry brigade of the Northwestern Operational Command have been formed to transport agricultural freight. Enlisted personnel are currently providing assistance to transport grain from fields in Minsk and Starodorzhsky districts. Eighteen automobiles have been allocated to assist the agricultural companies."*[61]

It should be made completely clear that in these cases enlisted personnel are acting under the orders of their commanders (and are forced "to carry out the orders of their commanders and leaders without question and within the timeframe given"—Article 23 of the law "On the Status of Enlisted Personnel").

Even though the mission did not have the opportunity to interview enlisted personnel who had served in the transport troops due to its time limits, reports of the regular use of enlisted personnel as unpaid labor on "fronts" far removed from military service appear regularly and openly in the press.

As already stated in this report, the ILO prohibits the use of forced labor. The purpose and scope of the exception in article 2(2)(b) of ILO Convention 29 was interpreted by ILO in its 2007 General Survey concerning the Forced Labour Convention and the Abolition of Forced Labour Convention. On this occasion, it was reaffirmed that "the reason and justification for compulsory military service was the necessity for national defense, but that not such reason or justification existed for imposing compulsory service obligations for the execution of public works, and therefore, to simply exclude compulsory military service from the scope of the Convention would without any further condition mean to allow compulsory public works implicitly , which would be contrary to the main purpose of the Convention – namely the abolition of forced or compulsory or forced labour in all its forms". The Conference accordingly decided that compulsory military service should be excluded from the scope of the Convention only if used "for work of a purely military character".[62] The condition of a "purely military character", aimed specifically at preventing the call-up of conscripts for public works, has its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of forced or compulsory labour "as a method of mobilizing and using labour for purposes of economic development".[63]

The situations given in this section therefore tend to confirm that military units are being forced to perform work that could not be qualified as "purely military" in nature. Furthermore, it appears that part of this work can, at times, be undertaken not only for public works but also jointly with the private sector, hence stressing the fact that such labor could be considered a means for economic development.

Arbitrary application of the law for political purposes

Arbitrary application of the law can be used for political purposes, just as it can be used for other purposes. For example, it happens that the young activists in political movements are drafted, particularly into the "transport troops," even if they have been given deferrals due to poor health or for other reasons. The drafting of two opposition activists — Franak Vyachorka and Ivan Shilo — turned into a real saga that played out on the official Belarusian state channel in 2009. The winter draft was totally unexpected for these young

60. Military information portal of the Belarusian Ministry of Defense. http://www.mil.by/ru/news/18588/
61. Military information portal of the Belarusian Ministry of Defense. http://www.mil.by/ru/news/2989/
62. See Forced labour, Report I, ILC, 14th Session, Geneva, 1930, pp. 137–140; ILC, 14th Session, Geneva, 1930, Record of Proceedings, Vol. I, p. 301. Cited in ILO, Report III (Part 1B), General Survey Concerning the Forced Labour Convention, 1930 (no.29), and the Abolition of Forced Labour Convention, 1957 (No.105), 2007 General Survey concerning the Forced Labour Convention and the Abolition of Forced Labour, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19,22 and 35 of the Constitution), 96th Session, Geneva, 2007.
63. See Ch. III, paras 167–170 concerning provisions of Art. 1(b) of Convention No. 105 in See Forced labour, Report I, ILC, 14th Session, Geneva, 1930, pp. 137–140; ILC, 14th Session, Geneva, 1930, Record of Proceedings, Vol. I, p. 301. Cited in ILO, Report III (Part 1B), General Survey Concerning the Forced Labour Convention, 1930 (no.29), and the Abolition of Forced Labour Convention, 1957 (No.105), 2007 General Survey concerning the Forced Labour Convention and the Abolition of Forced Labour, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19,22 and 35 of the Constitution), 96th Session, Geneva, 2007.

people because they had previously undergone medical checkups and received deferrals due to the state of their health. For example, the medical commission for the military committee in the Sovetsky District of Minsk found that Mr. Vyachorka was not suitable for military service. However, the regional medical commission expressed doubt over this decision and sent Mr. Vyachorka for examination at a military hospital. Upon the results of the hospital examination, Mr. Vyachorka was given a deferral until March 2009. Despite the deferral, however, Mr. Vyachorka was detained and then taken to the military committee in Minsk, after which he was admitted to a republican military hospital. This is when his earlier diagnoses started to change considerably. On January 16, 2009, forces removed him from the hospital in handcuffs.[64]

Ivan Shilo, deputy chairman of the Young Front organization, which is registered in the Czech Republic, was expelled from high school the day before he was due to take his last exam required for graduation in connection with his political activism. In the summer he received a medical deferral, but the situation developed just the way it had with Mr. Vyachorka. The draft committee convened before the results of the medical tests were ready. As Mr. Shilo explains, "During 'liberalization' [a softening of the regime in the period leading up to the election], public repressions were replaced with other, somewhat non-standard forms of pressure. The repressive nature of these actions did not change, but they became less obvious and more grounded in the law."[65]

Pavel Sergey, another Young Front activist, was expelled from Maladzyechna Polytechnic College after he was sentenced to administrative imprisonment at the detention center on Okrestina St. in November 2011. Soon after, he started to receive summons from the military committee, even though he was having health problems which he had referred to when meeting with the medical commission. At the military committee, he was told that he "would go serve because there were "special instructions" for him.[66] Then he submitted an application for alternative service, but this application was denied. On February 28, 2013, Mr. Sergey's cassation appeal was reviewed by the district court, but the Minsk Regional Court refused to approve his complaint. In the end, Mr. Sergey was sent to serve in the "road battalion" in Slutsk.

In addition to contravening the exception provided for under Article 2 of ILO Convention 29 on the prohibition of forced labour, situations such as those of Mr. Ivan Shilo and Mr. Pavel Sergey also violate ILO Convention 105 which requires the abolition of any form of forced or compulsory labour (as in Art. 1(a)) "as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the stablished political, social or economic system". They are also cause for deep concern and clearly violate Belarus' national and international obligations, including in the area of political and civic rights, e.g. the right to liberty and security, the right to equality before the law, the right to due process of law and the right to freedom of expression.

64. Human Rights Center Viasna, 27.01.2009: http://spring96.org/ru/news/26989
65. Human Rights Center Viasna, 27.01.2009: http://spring96.org/ru/news/26989
66. Human Rights Center Viasna, 07.05.2012: http://spring96.org/ru/news/52264

V. Subbotniks

"*A* subbotnik *consists of voluntary, organized, unpaid labor for the good of society which is performed during time off from work on the weekends, hence the name [from* 'subbota'*, the Russian word for 'Saturday')*." Wikipedia

"*According to a report from the press service of the Belarusian Council of Ministers, 3,457,000 people took part in the republic-wide* subbotnik *that was held on April 20, 2013*." Deputy Prime Minister Petr Prokopovich, who is the official in charge of the working group on organizing and holding republic-wide subbotniks, stated that the cleanup in towns throughout the country will go on. *"We are going to recommend that working groups and local agencies continue this work in places where not all the work was completed today due to weather conditions and other situations that made it impossible to completely clean everything up in one day,"* he explained. *"We will recommend that work in these places be completed within the next month so that the whole country will look dignified and so that there will be order and cleanliness everywhere. In this way, we will ensure that our president's instructions to the government and local authorities to have this work fully completed no later than May will be carried out*."[67]

"Subbotniks *are an excellent tradition, but I think we have slipped a little in organizing them*", said Prime Minister Mikhail Myasnikovich in April 2013. "*A* subbotnik *is a full day of work. Unfortunately, people seem to think of them more as a day to stroll around with a wire broom*." The prime minister believes that the cleanup of cities, communities, and courtyards should be performed outside the scope of the subbotnik. "*Our cities and villages are basically our homes, and we have a responsibility to keep them in good order*", he said. "*As far as* subbotniks *are concerned, they should include a full day of work at community facilities or places of work, and the money earned should be transferred to the* subbotnik *fund*". "*The government must strengthen requirements for organizing and holding republic-wide* subbotniks *so that they do not turn into idle play for officials and workers alike*", he concluded.[68]

Subbotniks were first held in the spring of 1919, during a period of civil war and military intervention, in response to Lenin's call to improve operation of the railways. This practice began to be used widely in the 1930s, which is also when they temporarily changed from voluntary to "voluntary forced."

Under Lukashenko, *subbotniks* in Belarus have acquired a unique additional element: *subbotniks* are held under republic-wide rules regulated by special orders and, depending on the type of enterprise, include either work to beautify an area or work at one's usual place of work, but unpaid (i.e. wages for that day are transferred to a fund specially created to receive them). Some companies (mainly private ones) may simply buy their way out of *subbotniks* by transferring an amount agreed upon in advance to the *subbotnik* fund. Under a decision of the Republic of Belarus, a nationwide *subbotnik* is held every April with the goal of "resolving the country's social and economic tasks." On April 9, 2013, the Council of Ministers adopted Resolution No. 275 on holding a nationwide *subbotnik* on April 20, 2013 "in connection with the fact that 2013 was named the Year of Economy and with the goals of ensuring maximally effective and rational use of natural, energy, material, and labor resources and of instilling in citizens the qualities of economy and efficiency."[69]

According to official data, 50 percent of funds earned at the *subbotnik* were transferred to the Ministry of Finance and then forwarded to the Ministry of Health for the purchase of special ambulances containing a complete set of medical and other equipment necessary for performing the first aid. In 2012, 50 percent

67. http://belapan.com/archive/2013/04/20/619508/
68. http://news.tut.by/society/344996.html 20 апреля 2013, Elena Prus, BELTA.
69. http://www.pravo.by/main.aspx?guid=3871&p0=C21300275&p1=1

of the funds earned during the nationwide *subbotnik* were spent on the construction of a new building for the Great Patriotic War Museum and the creation of an exhibit there. And in 2011, the money was spent on healthcare and sanatorium therapy for children living or studying in areas with radioactive contamination and for people who became invalid as a result of the disaster at Chernobyl and other nuclear accidents. The remaining 50 percent of the funds remain with local government agencies and should be used mainly for children's summer camps and other community needs, in accordance with the government resolution.

Under decisions made by local government agencies, regional and local *subbotniks* are held on a regular basis in addition to the nationwide *subbotnik*. Heads of individual companies may also schedule *subbotniks*. For example, a district-wide *subbotnik* in Vitebsk helped collect enough money for police cars,[70] and a series of local *subbotniks* in Rahačoŭ District were held to raise funds for the construction of an Orthodox Church:

> *"The Rahačoŭ District Executive Committee in Homiel Region issued an order to hold a subbotnik in the region's capital on December 6, 2012. As the district newspaper reported, "taking into account the petition submitted by Father Aleksey to work collectives on assistance to build a cathedral," the district executive committee "recommends that the heads of all forms of companies, institutions, and organizations, as well as sole proprietors, spend one day on charitable work." The funds (100 million rubles) were allocated for construction of the cathedral, which was built in 2009.[71]But this subbotnik and one that was held in April 2012 were not enough. "Unfortunately, prices for construction materials are constantly on the rise and the money that has been collected will not be enough to complete construction during the summer building season," explained Father Aleksey in an interview with the district newspaper Svobodnoe Slovo [Free Word], so another subbotnik to benefit the construction of the church was held in April 2013. On April 5, 2013, local authorities in Rahačoŭ announced another day of charitable work (subbotnik)—the third in a year connected with the construction of an Orthodox church in the regional capital. Sergey Yakovlev, acting chairman of the district executive committee issued the corresponding orders, and the money earned will be used to construct the Church of Alexander Nevsky.*[72]"

Officially, participation in *subbotniks* is still voluntary, which is stressed in a decision issued by the Soviet of Ministers, but their "voluntariness" bears the nature of compulsory labor based on the above mentioned reasons of high dependence on employers, the contract system and low wages, and the widespread use of a wage payment system built on the concept of bonuses that are not part of primary wages. Workers who do not participate in *subbotniks* face at a minimum the threat of being deprived of bonuses and of having a poor relationship with management, which could result in failure to extend a short-term contract. To make matters worse, filing appeals with courts or other institutions will not result in anything because the worker's punishment will not be officially linked to refuse to participate in the *subbotnik*.

According to a statement issued by HRC Viasna on April 14, 2011:

> *"Workers at the Mahilyow construction companies Construction Trust No. 12 and Promzhilstroy were compelled to turn out for the "voluntary" nationwide subbotnik. Anyone who did not come out to work at their places of work or to pick up trash in the city on April 16 would lose 50 percent of their wages.Workers at these organizations confirm this. Frightened by threats from management, they did not see any other way of keeping their jobs, so they followed orders. In addition to the nationwide subbotnik, another citywide subbotnik was held in Mahilyow on April 9.*[73]"

As noted above, another way for companies to participate in *subbotniks* is by donating money that has been deducted from workers' wages. This money is collected by accounting departments and then transferred to special accounts. However, this form of participation is also only formally of a voluntary

70. http://www.bbc.co.uk/russian/international/2013/04/130412_belarus_clean_up_for_police.shtml
71. http://spring96.org/ru/news/59585
72. http://spring96.org/ru/news/62373
73. http://spring96.org/ru/news/42646

nature—the amount of money donated by certain categories of workers is approved by company management and the money is withheld by the company's accounting department. The workers only have to sign the appropriate forms.



Opposite is a copy of an announcement posted at a company and signed by the company head, which was given to the mission. In typical fashion it begins: "You must immediately register with the accounting department and indicate the amount of your contribution." The 'voluntary nature' of this order is highlighted by the fact that these amounts have been set in advance: doctors must contribute 38,000 rubles, paramedics and nurses, 27,000 rubles, and other workers, 18,000 rubles. Finally the announcement notes that "All funds collected will be used for the purchase of a new ambulance."[74]

The website of the Brest City Executive Committee contains the following announcement from April 2012:[75]

> "*According to tradition, the month of April will be devoted to beautification and landscaping, and a citywide subbotnik will be held on April 21, 2012. We call upon all heads of companies, organizations, and city institutions to carry out the following tasks using their work collectives:*
> *– clear designated areas of trash;*
> *– perform repairs, refresh whitewash, paint barriers, fencing, and other hardscaping, and care for lawns, flowerbeds, and planters;*
> *– perform other activities assigned by district administrations…*
>
> *We recommend that all work collectives at companies, institutions, and organizations in the city of Brest, regardless of their form of ownership and of which department they are subordinate to, voluntarily transfer funds earned at work places on the day on which the subbotnik is held in amounts determined by workers, including workers whose jobs do not involve production work or provision of paid services, to the settlement account of the Brest City Executive Committee. As in previous years, these funds will be used to resolve tasks connected with the social and economic development of the city…*".

Workers at organizations and companies in Krasnopolsk District of Mahilyow Oblast spent three days working without pay in April 2012. On April 14, a district-wide *subbotnik* was held where workers from the district's organizations and companies worked to beautify villages and rural settlements under an assignment from the District Executive Committee. After that, the District Executive Committee decided to hold a Day of Unpaid Labor on April 16. The decision by district officials reads as follows: "During the Day of Unpaid Labor, workers at all forms of companies, organizations, and institutions, as well as sole proprietors work at their places of work, while their average wages are transferred, with their voluntary agreement, to the settlement account of the Krasnopolsk District Executive Committee." Funds collected in this manner from the district's working population will be used "to carry out work to beautify the area." Finally, on Saturday, April 21, all workers in Krasnopolsk District were required to participate in a nationwide *subbotnik*. Again, the funds earned were divided between republic and local budgets.

"Naturally, people expressed their outrage in private conversations," one resident of Krasnopolsk District told HRC Viasna. "But people just could not make up their minds to protest out loud. They feared losing their jobs." Meanwhile, wages in Krasnopolsk District are extremely low. Averages wages for January – February 2012 amounted to only 2,063,300 rubles (92.4 percent of wages in the same period for the previous year).[76]

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74. http://spring96.org/ru/news/62715
75. http://city.brest.by/topic.php?tid=1734
76. http://spring96.org/ru/news/51794

In the lead up to the nationwide festival Dozhinki, unpaid work days occur with more frequency, and owners of private homes are forced to repair and paint the façades of their own homes at their own expense.

Viktor Banchuk, head of the Rahačoŭ District Executive Committee notified residents that the nationwide Dozhinki celebration (which is allocated quite a large budget) would not be held there as planned, but that the region-wide Dozhinki festival would be held in their city in 2012. If the district newspaper is to be believed, this information was a "pleasant surprise" for residents. When the nationwide festival is held in a city, there is always a lot of new construction, but when only the regional festival is held in a town "there will not be any new construction." As Mr. Banchuk explained, we are "faced with the task of bringing order to what we already have. And we must do this efficiently and economically, with little expense." Part of the funds for this would come from the regional and district budgets, but residents themselves would also have to earn money for the festival. "I think that during this time we should hold two *subbotniks* in the district and send the funds that we earn to beautifying a site of significance in our city," Mr. Banchuk continued. He called on people to establish order for the festival, and he also said that "a general clean up needs to be done in your own homes and courtyards, and in the areas adjacent to these places. Special attention must be paid to fences, entryways, stairwell landings, façades, and roofs, which are in very bad shape on many buildings." Mr. Banchuk ordered the heads of companies and organizations to spruce up administrative buildings. He ended with the warning that "there can be no talk whatsoever of funds for these things, because there is simply not any extra money in the budget."[77]

Authorities in Byhaw District announced that a district *subbotnik* dedicated to preparations for Belarusian Literature Day would be held in January 2013. Money earned during the *subbotnik* would be used to restore Byhaw Castle.[78]

While community service may be acceptable as a civic duty , the system of *subbotniks* in Belarus exists under conditions that result in numerous human rights violations.

As stated in Article 2.2.(e) of ILO Convention 29 on forced labour, community service may not be considered forced labor provided that it involves : "minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community [and which] can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

In this case, those undertaking *subbotniks* clearly were not consulted in the decision-making processes surrounding such community work. On the contrary, the frequency under which *subbotniks* take place tends to confirm that they do not refer to "minor communal services". Moreover, the consequences faced by workers who refuse to take part in *subbotniks* are such (deterioration of relationships with management, loss of bonuses, fear of job loss, intimidation) that participation in *subbotniks* could be considered a form of forced labor. Furthemore, the ILO Convention 105 requires the abolition of any form of forced or compulsory labour (as in Art.1 (b)) "as a means of mobilizing and using labour for purposes of economic development".



Propaganda poster "Make Minsk more beautiful !", Minsk, June 2013
Photo: FIDH

77. http://spring96.org/ru/news/53197
78. http://spring96.org/ru/news/60607

VI. Medical-Labor Centers

"Correctional medical-labor centers (MLCs), medical sober stations – we need to take a serious look at this system and create such centers where they are needed and close them where they are not needed. We have to approach this sensibly. It is a real problem for us. Today this is a function of the militia because tomorrow these people will be disturbing public order… this is a way to prevent future crimes. But this has to be paid for, and the pay has to be good. If he does not have money, then give him the kind of work that will make him never want to end up in these places again and that will earn you a certain amount of money."[79]
President Alexander Lukashenko, November 2012

"Medical sober stations and medical-labor centers must be self-supporting. I am going to repeat myself for the very last time: the task of the police and local authorities is to find work that corresponds to the qualifications of people being held in these institutions and give them a full workload. Otherwise, MLCs will become like rest homes for alcoholics, and simple taxpayers will be the ones feeding them."[80]
President Lukashenko in a speech during a signing ceremony at the Oval Hall in the House of Government, November 2004

Alcoholism is one of the most serious problems in Belarus. Between 2001 and 2011, sales of alcoholic drinks and beer rose from 8.8 liters to 13.3 liters (in terms of absolute alcohol) per capita, which significantly exceeds the critical threshold of eight liters set by the World Health Organization.

Sergey Molochko, head physician at the Minsk Narcological Dispensary and head outside narcologist for the Health Committee of the Minsk Municipal Executive Committee stated that a social study conducted in 2010 by the Institute of Sociology at the Belarusian National Academy of Sciences showed that actual alcohol use in the country amounts to 15 – 16 liters per capita.

As of July 1, 2013, almost 180,000 dispensary patients were suffering from alcoholism. Of these, almost 40,000 were women and almost 4,000 were experiencing alcohol-related psychosis. Additionally, almost 90,000 people on a preventive list were observed to suffer harmful effects from alcohol use; 16,000 of them were juveniles.

Meanwhile, Alexander Kokhan, deputy head of the Main Consumer Market Department of the Minsk Municipal Executive Council stated that "proceeds from the sale of alcohol are a significant component of budget revenues." Overall, alcoholic drinks account of 11 percent of total products purchased throughout the country.[81]

The fight against alcoholism, like fights in other spheres, is conducted through repressive measures and has essentially morphed into a battle against alcoholics. The main mechanism in this fight are the Medical-Labor Centers (MLC).

In the Soviet Union, the MLC system was used actively beginning in 1967. Following the collapse of the Soviet Union, the majority of its former republics eliminated the MLC system. In Belarus, the practice of sending individuals to MLCs stopped temporarily after 1991. It was revived in the late 1990s and has been used more frequently in the last few years. MLCs, which fall under the authority of the Ministry of Internal Affairs (MIA) of Belarus, were created as a means of compulsory isolation and medical and social rehabilitation through the use of compulsory labor for citizens suffering from chronic alcoholism, drug addiction or substance abuse. Citizens are obligated to compensate the

79. http://president.gov.by/press141011.html#doc
80. http://president.gov.by/press18755.html
81. http://naviny.by/rubrics/society/2013/06/26/ic_articles_116_182169

costs of maintaining their children in state child care facilities when these citizens have systematically violated work discipline due to the use of alcoholic drinks, narcotics, and psychotropic, toxic, or other intoxicating substances.

For a long time the law "On Measures to Forcibly Influence Alcoholics and Drug Users who Systematically Disturb Public Order and Violate the Rights of Others," adopted by the Supreme Soviet of the Belarus Soviet Socialist Republic (BSSR) on June 21, 1991, regulated the procedure that condemns citizens dependent on alcohol or drugs to confinement in an MLC. The law was amended in 1994, 2000, and 2008. In December 2009, a new law "On the Procedures and Modalities of Transfer of Citizens to Medical-Labor Centers and the Conditions of their Stay," was adopted by the House of Representatives of the National Assembly of the Republic of Belarus and came into force on January 4, 2010. In accordance with the law, amendments were made to the Code of Civil Procedure, in particular to chapter 30, adding Paragraph 12 on "Special proceedings in cases of citizens sent to MLCs, the extension of their stay, and their release from MLCs."
Currently, the detention of citizens in MLCs is regulated by law No. 104-3 "On the Procedures and Modalities of Transfer of Citizens to Medical-Labor Centers and the Conditions of their Stay" of January 4, 2010; by the Penal Code: Paragraph 12 of Chapter 30 (special proceedings); and by the Rules of Internal Order of MLCs, approved by Resolution No. 264 of the MIA of October 9, 2007.
Resolution No. 264 of the MIA of October 9, 2007 approves Rules of Internal Order at MLCs (hereinafter, the Rules). In accordance with these rules, individuals confined to MLCs must work at worksites where they are sent by the MLC administration and must observe job safety measures (Paragraph 26.18). In theory, labor conditions for individuals confined to MLCs are regulated by labor legislation with account for the rules of a confinement in MLCs. Thus, laws on labor agreements; collective bargaining agreements; part-time work; maintenance of wages when moving or being transferred to a lower-paying position; company labor collectives; guarantees for workers while they are performing state or community duties; and disciplinary liability do not apply to these individuals.

In accordance with Article 4 for the law "On the Procedures and Modalities of Transfer of Citizens to Medical-Labor Centers and the Conditions of their Stay," which took legal effect on January 4, 2010, the following categories of citizens may be sent to MLCs: citizens suffering from chronic alcoholism, drug addiction, or substance abuse who have, over the course of one year, faced administrative charges three or more times for committing administrative violations under the influence of alcohol, narcotics, and psychotropic, toxic, or other intoxicating substances; been warned that they may be sent to an MLC in accordance with current law; and, within one year of receiving such a warning, have faced administrative charges for committing administrative violations under the influence of alcohol, narcotics, and psychotropic, toxic, or other intoxicating substances;

The following groups of people are not subject to being sent to MLCs: citizens under the age of 18; men over the age of 60; women over the age of 55; pregnant women; women with children under one year of age; group 1 and group 2 invalids; citizens who have illnesses that prohibit them from staying at an MLC.

In accordance with Article 5 of this law, citizens suffering from chronic alcoholism, drug addiction, or substance abuse who have, over the course of one year, faced administrative charges three or more times for committing administrative violations under the influence of alcohol, narcotics, and psychotropic, toxic, or other intoxicating substances shall be sent to a healthcare institution for examination and diagnosis of chronic alcoholism or drug addiction. Citizens have the right to file an appeal to the decision to send them to a healthcare institution with a senior official at the internal affairs agency or public prosecutor's office, or with a court of law.

If a diagnosis of chronic alcoholism, drug addiction, or substance abuse is made, the corresponding medical report is forwarded to the head of the internal affairs agency, which will then issue a warning on the possibility of being sent to an MLC within ten days following the receipt of such report. The concerned citizen is notified of this warning by delivery of a written copy. In accordance with Article 6 of the Law, a citizen has the right to file an appeal to this warning with a senior official at the

internal affairs agency or public prosecutor's office, or with a court of law. However, the Civil Procedural Code does not contain any instructions on the procedures for reviewing such a warning.

Under Article 7 of the law, within ten days after receipt of information on the imposition of administrative sanctions on a person who was warned of the possibility of being sent to an MLC within one year for committing administrative violations under the influence of alcohol, narcotics, or psychotropic, toxic, and other intoxicating substances, the head of the internal affairs agency shall send this person for a medical examination.

Within ten days of receiving a medical report concluding that the concerned citizen suffers from chronic alcoholism, drug addiction, or substance abuse and that this citizen does not have any illnesses that would prohibits him or her from staying at an MLC, the head of the internal affairs agency or his deputy files a petition with a court of law to send this citizen to an MLC.

For example, HRC Viasna has come up with the following case in point:

> *Mr. X used bad language in public while in a state of alcohol intoxication. He was subsequently arrested and brought to court, where he received an administrative sentence of 15-day administrative arrest for petty hooliganism. A few weeks after his release, the police find him drinking in a public space, and fine him for it. Later, he faces administrative charges another two times and is fined for appearing in public in a state of alcohol intoxication and offending public morals in a public place. These three events have occurred within a one-year period. Therefore, the district police department sends him for a medical examination in order to establish whether he suffers from alcoholism. After receiving a medical diagnosis confirming that, Mr. X is warned officially by the chief of the district police department that he might be sent to an MLC if within one year of this warning he is charged with an administrative offense for committing a violation in a state of alcohol intoxication or in a state caused by the use of narcotic or other intoxicating substances.*
>
> *The next time he is found in a state of drunkenness in public and is charged with another administrative offence within one year after the warning, the police take Mr. X to a hospital once again to confirm his chronic alcoholism. The police transmit all documents to an ad-hoc district civil court that condemns Mr. X under Articles 361-393.12 of the Civil Procedure Code of the Republic of Belarus to one-year confinement in an MLC. The case is reviewed with the participation of the public prosecutor's office and the individual subject to being sent to the MLC. If the latter does not appear, the judge draws up a compulsory summons for this person to appear in court. The court's verdict in this case may be appealed within ten days. The individual may choose to be assisted by counsel. However, the right to use an attorney's services does not guarantee the ability to receive legal services at the expense of the bar association if the individual to be sent to the MLC lacks funds at the time the case is reviewed or to have an advance for an attorney's work paid for from budgetary funds, which is the procedure for criminal cases.*

Thus, his confinement in an MLC is not a punishment for committing a particular administrative offence, but is ordered in connection with Mr. X's chronic alcoholism and for his committing, in a state of intoxication, other previous offences, punishment for which he had already completed.[82]

The legal status of individuals held in MLCs

The legal status of individuals held in MLCs corresponds to the status of individuals who have been deprived of freedom, although they are neither convicted to deprivation of or restrictions on their freedom nor are they under administrative arrest.

According to Article 26 of the Constitution of the Republic of Belarus, no one may be found guilty of a crime unless his guilt was proven under a procedure specified in law and established by a court

82. The Human Rights Center Viasna. Medical-Labor Centers in Belarus http://spring96.org/en/news/66543

verdict. Deprivation of freedom can solely be applied to a person found guilty of a crime, i.e., if guilt has been established by a court verdict. However, the isolation of individuals in MLCs and the duration and conditions of their confinement essentially amount to a deprivation of freedom.

Article 14 of the Constitution establishes labor as a right, not as an obligation. Therefore, forced labor of citizens as stipulated in the Law of the Republic of Belarus "On the Procedures and Modalities of Transfer of Citizens to Medical-Labor Centers and the Conditions of their Stay" is in explicit contradiction with the Constitution of Belarus since it is being applied beyond the scope of a court verdict issued in connection with a crime.


Men expecting the transfer to the Medical-Labour camp, Minsk

The practice of forced measures of a medical nature, which is established in the Law of the Republic of Belarus "On the Procedures and Modalities of Transfer of Citizens to Medical-Labor Centers and the Conditions of their Stay" contradicts the Law of the Republic of Belarus "On Healthcare" and violates the legal rights of citizens and their personal inviolability.

In its expert report[83], HRC Viasna notes that "the ultra-repressive policy of medico-social rehabilitation" causes particular worry in a country where the activities of law enforcement agencies give rise to a great deal of criticism. In the case of MLCs, "rehabilitation" is applied to thousands of ill people (4,000 – 5,000 people annually), who actually need medical or social assistance.

The Law stipulates that individuals who are confined in MLCs enjoy the same rights as citizens of the Republic of Belarus, but with some restrictions. These restrictions arise from the necessity to ensure forced isolation and medico-social rehabilitation with forced labor as provided by law. In practice, however, individuals held in MLCs are not allowed to leave freely, must follow the internal rules, and are under surveillance. Under Article 47 of the Law, MLC inmates must work; refusing to work results in punishment, such as solitary confinement for up to ten days. Having several violations of MLC rules gives the court reasons for extending the sentence for up to six months. Detainees are subjected to full body searches and searches of their personal belongings. They are not allowed to keep personal documents and money (or other items that are prohibited).

Article 16 of the Law provides for the use of physical force and special restraining equipment by MLC staff and members of the internal troops against inmates in accordance with legislative acts of the Republic of Belarus.

An individual confined to an MLC who violates the Rules or refuses to perform work is subject to the following corrective actions: warning, reprimand, and placement in an isolation cell for a period of up to ten days.
From Rules of Internal Order at Medical-Labor Centers of the Ministry of Internal Affairs in the Republic of Belarus:

> *26. Individuals confined to MLCs must:*
> *26.17. move around within the territory of the MLC in an orderly fashion (line) under the escort of a senior officer or a member of the MLC administration (individuals may only move around on their own with a person from the MLC administration);*
> *26.18. work at worksites where they are sent by the MLC administration and observe job safety measures.*

83. Ibid.

Conditions of Detention in MLCs

The critical situation with overcrowding at MLCs was evident as long ago as 2009. According to data from the Ministry of Internal Affairs (MIA), as of the end of October 2009 MLCs held 4,705 people, which is 25 percent higher than during the same period for the previous year. The MIA reported that the number of citizens confined to the six functioning MLCs exceeded living space requirements set for these facilities by 34.8 percent or 1,215 people.

The MIA also stated that "the situation is particularly difficult at MLC No. 2, where the number of women confined is 2.5 times higher than it should be."[84]

Finally, the MIA noted that 4,104 people suffering from chronic alcoholism, including 975 women, were confined to MLCs over the first nine months of 2012, which is somewhat lower than the same figure for 2009, even though overcrowding remains a problem.[85]

It is actually patrol officers who in fact resolve issues related to sending individuals to MLCs in instances of substance abuse and in cases where parents have been deprived of their rights. As President Lukashenko put it, "the patrol officer is God, the Tsar, and the on-site military commander."[86] Excerpts from an article appearing on the official website of the MIA give an idea of the kind of work that patrol officers perform and of the role that the authorities have assigned to them. The article is titled "The Simple Truths of Stanislav Moiseev."

"The Danger of Parasites and Alcoholics

> *Our hero is a threat to the alcoholics and the obligated. Stanislav (senior patrol officer Major Stanislav Moiseev of the Rechitsk District Police Department) himself never touches alcohol and cannot stand people who do. This is probably why his district sends the greatest number of people to MLCs: he and his colleagues have identified over 80 alcoholics in the past year alone.*
>
> *"It used to be that whenever I saw someone who was drunk, I would take him right off to the judge. I was young, and sometimes I overreacted," he recalled. "Once I even threw my own brother-in-law and father-in-law into a cell. Now I try to be a little more thoughtful, and I always give a warning first. […]"*
>
> *As we drove along, he nodded at some seemingly ordinary brick houses along the side of the road. "That's the menagerie," he said. "Troubled families live in those buildings; regular people do not move in here—no one wants neighbors like these. I drop by here on a regular basis just to see what is going on. Many people here have been to MLCs more than once because of me."*
>
> *Our hero is well-known here. Everyone greets him respectfully. Major Moiseev introduced some of those met: this one recently returned from an MLC, the next one was sent there five times, and that one sorted himself out after just one visit.*
>
> *"We send hardened alcoholics to MLCs, but only about 30 percent of them mend their ways. We have a record holder on our beat—he has been to the MLC ten times.*"[87]

The MIA site also gives accounts of special MIA operations, like operation "The Good Way of Life".

> *The Main Internal Affairs Directorate reports that the operation The Good Way of Life was carried out in Minsk from January 25 – February 25. During this operation, over 200 chronic alcoholics in Minsk were sent for compulsory treatment at MLCs, and over 400 alcoholics were taken to substance abuse centers for registration.*

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84. http://www.interfax.by/news/belarus/62660
85. http://www.interfax.by/article/95756
86. http://news.tut.by/society/320637.html
87. http://mvd.gov.by/main.aspx?guid=63063

According to the MIAD, this operation helped uncover almost 1,800 people who are evading labor activities. The report also specifies that over 200 of these people exist mainly by collecting recyclables, 270 of them live off their relatives, and over 800 have unofficial jobs or do odd jobs.[88]

There are currently six Medical-Labor Centers operating in Belarus.[89]

Since MLCs are closed institutions guarded by MIA officers, there is virtually no public supervision over them. Although the Ministry of Justice has formally created public supervisory committees, they are severely restricted in their rights—visits must be agreed upon with MIA agencies, no photographing, videotaping, or audio recording is permitted, and reports on visits may not be published. Thus, these public committees function more as an internal control mechanism for the Ministry of Justice. A member of one of these committees told the FIDH mission that MLCs are monitored even less than prisons. The reason for this is that people released from prison include activists, human rights defenders, etc., and these people are able to shed some light on the situation in the prisons. Meanwhile, people released from MLCs do not have the same social status and they are simply not heard. Moreover, during their confinement in MLCs, their complaints to higher-level agencies are subject to censorship under Paragraph 133 of the MLC Rules of Internal Order: "Suggestions, statements, and complaints addressed to government agencies or other organizations shall be accompanied by a letter from the MLC administration where the administration briefly presents its opinion on the contents". "The sender (the individual confined in the MLC) shall pay fees for sending suggestions, statements, and complaints."[90]

Clearly, these rules complicate the collection of credible data from MLCs. In 2009, HRC Viasna conducted observations based on materials from interviews with several citizens who had been confined to MLCs for a period of one year.

In these interviews, respondents categorized the conditions of detention as "horrible" and "difficult". What follows is a summary of those testimonies made by the HRC Viasna and containing some of their descriptions of the living and working conditions:

Altogether, there were two buildings made of two floors each. The living areas were damp and it was cold in the winter. When we were sleeping, we had to cover ourselves with quilted jackets and sleep in our clothes. The ceiling was leaking, so we placed buckets on the upper beds (on the third bunks), and we slept 2-3 to a bed. It was hot in the summer and the air was stale. The heaters did not let off much heat. There were cracks in the windows that we covered ourselves.

In the medical unit, people slept on the floor, on mattresses. Areas used for living were unsuitable for this purpose. For example, a vestibule area right in front of drying room (a walk-through room with an area of almost 18m^2, which held 18 to 27 people in 2008.) The windows in this room had bars on them (which they did not in the rest of the rooms). Up to 60 people would live in a regular-sized room (with an area of about 80m^2). Triple bunk beds were also set up there, with less than a half a meter of space between them, so it was impossible for two people to pass at the same time and it got very crowded when people were waking up in the morning. Bed linens were changed twice a month, and fresh linens usually were not terribly clean and sometimes had spots. There were very few toilets and sinks: on the second floor there were only three toilets and five sinks (only three of which worked) for almost 300 people. And there were only three working showers out of four for the entire MLC. The water was also turned off frequently and people had to go outside for water. The sinks only had cold water. There was enough light. Reading was not allowed, and people confined to MLCs have almost no free time anyway, even on the weekends. Searches were conducted of living premises, even by male police officers. After residents returned from work, they were lined up in the courtyard and recounted (at about 6 p.m.).

88. http://www.interfax.by/news/belarus/52063
89. MLC No. 1 in Svetlahorsk, Homiel Region, MLC No. 2 in Starosele, Horki District, Mahilyow Region, MLC No. 3 in Pavlovka, Slutsk District, Minsk Region, MLC No. 4 in Vitebsk, MLC No. 5 in Navahradak, Hrodna Region, MLC No. 6, Dzerzhinsk, Minsk Region.
90. Resolution of the Ministry of Internal Affairs of the Republic of Belarus No. 264 dated October 9, 2007. "On the Approval Internal Order Rules at Medical-Labor Centers of the Ministry of Internal Affairs of the Republic of Belarus."

They put you in a small punishment cell in the basement for any violations. This cell was heated, but it was very cold in the summer. When commissions visited, people confined to MLCs were taken to work and locked in drying rooms in order to hide their real numbers. Almost 1,200 people were held in the MLC at one time.

Work

Residents get up for work at 3:00 or 3:30 a.m. depending on how far away their worksite is from the MLC. Work is performed under the supervision of "controllers." Soap is issued. Workers are not provided with gloves or any other special kind of clothing. Residents were issued "overalls, reflectors, and kerchiefs," which they had to pay for themselves.

Residents are frequently used at construction sites, and accidents have sometimes occurred. Hardhats and safety belts are not issued. No instruction on safety equipment is given, but people must sign a form saying that they have supposedly received instruction.

T. Kozubbovskaya never had any days off for six months. This is the accepted practice. Work days can last for over eight hours. Overtime is not paid. There are no perks or bonuses for working on the weekend. Moreover, in accordance with the law, timesheets are filled in by the foreman, so the number of actual days or hours worked that exceed the norm are not counted. Residents are taken to work sites on buses and open trucks, even during the winter. Transportation is not heated.

Medical Service

Health and hygiene products are not provided—residents must purchase them with their own funds. At that time there was not a doctor specializing in substance abuse or a gynecologist at the MLC. There was an internist, a dentist, three nurses, and sometimes a psychologist. Medical assistance usually amounts to handing out metamizole tablets. No treatment for alcoholism is offered; during the first three days of confinement, alcoholics are given one Vitamin C pill and two valerian pills, but nothing else. When people arrive at the MLC, they are checked for head lice and scabies, but no other type of medical examination is performed on them. There was even a case when an intoxicated person was confined to an MLC and then went mad. Photofluorographic screenings are performed once a year.

Funds for Living

Wages are extremely low, so the only real way for residents to get by is on their own funds that they receive from outside the MLC (money transfers, packages, etc.). Other workers at construction and other sites who work with MLC residents receive significantly higher wages for the very same work. The remaining funds from wages go to pay for living in the MLC dorm and repaying debts, like maintenance of children in state child care facilities (for parents who have been deprived of their parental rights and have children who are minors). Due to their low wages, the money that residents owe the state for maintenance of their children in state child care facilities during their stay at the MLC keeps growing. For example, Ms. Kozubovskaya's and Ms. Ivanova's debts grew from almost three million rubles to four million rubles during their stays at the MLC. Ms. Ivanova had to pay 320,000 rubles per month for maintenance of her children. Thus, in October 2009 she received 43,000 rubles (for a job at her place of residence, after her "release"); her wages are 219,000 rubles. In October, Ms. Kozubovskaya received almost 21,000 rubles from wages of over 100,000 rubles. This shows that the indebtedness of parents who have been deprived of their parental rights to the state is constantly growing. People leave MLCs without any money. Upon her release, Ms. Ivanova received 15,000 rubles and Ms. Kozubovskaya received 5,000 rubles.[91]

Mahilyow native Maria Kulmanova spoke about what takes place behind the walls of the women's MLC in Staroselie, Horki District, Mahilyow Region. Her daughter spent one year at this MLC. She was sent there as an individual obligated to repay expenses for the maintenance of her children, who are in a state child care facility. "*The center was like a concentration camp for her*", said Ms. Kulmanova. According to her daughter, the MLC was designed to hold 300 people, but it actually held 500. In April 2013,

91. http://spring96.org/ru/news/30822

Alexander Petrusevich, deputy head of the Department for Law Enforcement and Crime Prevention of the Internal Affairs Directorate of the Mahilyow Region Executive Committee stated that according to the committee's official information, "*the capacity [of the MLC] is 250. It currently holds 500 women. Another 100 convicted women are awaiting their turn to serve*."[92]

The women slept on triple bunk beds, and there was no hot water in the winter or in the summer. There is a garment manufacturer on the territory of the MLC, so, regardless of their specialties, anyone who is lucky enough to get a job at this manufacturer works as a seamstress. Wages range from 700,000 to two million rubles (about 200 euros) a month. But, as obligated people, two-thirds of their wages are deducted for the treasury. As far as treatment is concerned, Ms. Kulmanova's daughter stated that the only medicines distributed were valerian pills. The sole treatment available to people is forced labor. Ms. Kulmanova says that work therapy is accompanied by constant indignities, and there is never any talk of treating people for alcohol dependence.[93]

According to the MIA, "23 percent (1,117 people) of the total population in MLCs are there for a second stay and 11.6 percent are there for the third time or more."

The mission's visit to Staroselie, Horki District, Mahilyow Region



Medical-Labour Camp No. 2 in Staroselie village, Goretsky District of the Mahilyow Region

The mission could not access to an MLC, but it traveled to the village of Staroselie, Horki District, Mahilyow Region, where women's MLC No. 2 is located. On their approach to the village, mission members were able to observe women residents of the MLC mowing grass along the sides of the road. They were not wearing work clothes. Village residents said that they were very pleased to have the MLC in their village because the women "do many useful things: they clean, they mow, they collect the harvest, they look after the roads." A garment manufacturer is located just near the MLC, but only 23 women work there. The rest are taken to companies with which the MLC has signed agreements. The mission observed women returning from work to the MLC. Over the course of one hour, 17 different vehicles brought about 70 women to the MLC. The vehicles ranged from MIA cars to small buses for ten to 20 people, some of which clearly belonged to companies. These vehicles were met at the checkpoint by a female MIA officer in uniform carrying a baton, who led them onto the territory of the MLC. All the women were wearing regular clothes.

The territory is surrounded by a fence with barbed wire, but no bars were noted on windows visible from the street. One of the people interviewed by the mission who had actually been inside this MLC said that the sanitary conditions were horrendous. The bathrooms are always out of order, and the toilets are clogged up with excrement. It is fairly common that the women do not have enough to eat and do not receive sufficient medical assistance.

Legal analysis

The Law of the Republic of Belarus "On the Procedures and Modalities of Transfer of Citizens to Medical-Labor Centers and the Conditions of their Stay" and the practice of confinement of citizens in MLCs both result in serious violations of international human rights treaties ratified by the Republic of Belarus.

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92. http://region.mogilev.by/ru/news/ezhednevno_v_uvd_mogilevskoi_oblasti_fiksiruetsya_okolo_400_soobshchenii_o_semeinykh_skandal
93. http://www.dw.de/лтп-лечение-алкоголизма-по-белорусски/a-16164867

The absence of the procedural safeguards of the fair trial prior to detention in an MLC and of any means to appeal against the medical testing on alcohol dependence or against the warning of the possibility of being sent to an MLC, renders detentions arbitrary, constituting a violation of article 9(1).[94] The legalization of forced labour also contravenes Article 6(a) of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of each individual "to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right".[95]

As already stated in this report, forced labour is also prohibited under International Labour Convention No. 29. The exception contained in Article 2(1)(a) does not apply in this situation, as isolation in an MLC is sanctioned by a civil court -as opposed to a criminal court- which means that the punishment is not given for committing an actual offense or crime. Reference has also been made in this report to the disposition of workers for private interests.

On the other hand, the conditions of detention, including work conditions and withholding of wages, lack of sufficient and acceptable food, poor sanitary conditions, and the absence of adequate medical treatment also contravene many of Belarus' international human rights obligations. They violate the minimum core obligations of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (the right to an adequate standard of living, including the right to food and the right to the highest attainable standard of health).[96] The existence of MLCs targets vulnerable and marginalized groups, which contravenes the state's core obligation to ensure adequate, affordable and acceptable access to quality health facilities. This has been confirmed by the Committee on Economic, Social and Cultural Rights in its General Comment 14 on the right to the highest attainable standard of health. The same analysis applies with regard to the lack of appropriate and sufficient food: meals do not supply the minimum amount of food essential for ensuring adequate nutrition and safety and freedom from hunger, and the living conditions in detention centers do not ensure access to basic shelter, housing and sanitation.[97]

While a case-by-case analysis would be required, the use of isolation cells for a period of up to 10 days in cases where rules are violated, the lack of adequate food, and the poor housing and sanitary conditions could potentially amount to a form of inhuman and/or degrading treatment prohibited under article 7 of the ICCPR.[98] Hazardous work conditions and related accidents threaten the safety of MLC detainees.

Finally, as far as members of the FIDH-HRC Viasna mission were able to assess, companies in the private sector have signed agreements with MLCs. Therefore, it is not just government authorities that fail to provide adequate protection to affected individuals, but also companies, which, through their involvement, fail to meet their responsibility to respect human rights at all times throughout their activities, as reaffirmed by the UN Guiding Principles on Business and Human Rights. In this situation, these companies contribute directly to human rights violations.

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94. See HRC General Comment No. 8, 27/05/2008 *Right to liberty and security of persons*, HRI/GEN/1/Rev.9 (Vol. I) and Draft General comment No. 35, 29/01/2013 *Liberty and security of person* CCPR/C/107/R.3

95. *Комитет по правам человека, A против Австралии*, CCPR/C/50/D/488/1992, 4 апреля 1994 г.

96. See CESCR, General Comment 14, 11/08/2000 o the highest attainable standard of health, E/C.12/2000/4 and CESCR, General Comment. General comment 12, 12 /05/1999): The right to adequate food, E/C.12/1999/5 and CESCR, General Comment. General comment 4, 01/02/1992): The right to adequate housing, E/1992/23

97. Ibid, General Comment 14, para. 43

98. Regarding prison conditions see, for example Human Rights Committee, Howell v Jamaica, CCPR/C/79/D/798/1998, 7 November 2003. "Deprivation of food and drink for several days" has been considered as a violation of article 10 in HRC Tshiesekedi v. Zaire (242/1987), § 13b, and Miha v. Equatorial Guinea (414/1990), § 6.4

VII. Obligated Persons

"When we speak about the rights of children, we must first speak about orphans.

Children often become orphans while their parents are still alive. But then I guess you cannot really even call them parents. Last year almost 4,200 children were taken away from parents who had been deprived of their parental rights. As if this was not enough, these children are also deprived of a full-fledged childhood. In 2003, the state spent almost 16 billion rubles from the treasury and no less than that from sponsors on maintaining these orphaned children.

Therefore I am instructing the Government, the Supreme Court, the Public Prosecutor's Office, and members of Parliament to prepare a regulatory act on enhancing parental responsibility for raising children and to stipulate that parents must compensate the state for money it spends on children's homes, orphanages, and foster families.

If they do not have money, if they drink it all away, if they do not work, well, then we will force them to work and to pay back every last kopeck and then some."[99]

"Anything that relates to children is a matter of the utmost concern for our government. Since the adoption of the law "On the Rights of Children," courts throughout the country have reviewed over thirty thousand civil cases in regards to the recovery of expenses for maintaining children in state child care facilities. Over 97 percent of these cases were satisfied.

We have recently published special Decree No. 18 'On Additional Measures for State Protection of Children in Troubled Families,' which obliges negligent parents to find work and compensate the state for maintaining their children.

I understand what a difficult task it is to force people who have never worked to work, if they know how to work at all. But we must resolve this task."[100]

"Expenses to support children must be repaid by parents in full, and I stress, in full, up to the last kopeck. Parents must pay 100 percent of the costs for the support of their children, and if they cannot, then they must be forced to. This may sound harsh, but they must be placed behind barbed wire and taken off to work."[101]

Over the past several years, the Belarusian government has introduced a number of new rules that have tightened restrictions on the rights of individuals suffering from various dependencies. Presidential Decree No. 18 of November 24, 2006 allows authorities to remove children from the families of alcoholics and drug addicts initially without a court decree for "government support." "Children are entitled to government protection and placement in state child care facilities if it has been established that their parents (parent) are leading an immoral way of life which has a harmful influence on said children, or are chronic alcoholics or drug addicts, or are in some other way unable to properly perform their obligations to raise and maintain children, in connection with which these children find themselves in a socially dangerous situation." In accordance with this decree, such parents are obliged by a district court decision (as part of civil proceedings) to compensate the state for expenses related to the maintenance of their children in state child care facilities and are also subject to compulsory job placement. These parents are given the status of "obligated persons", to which effect a stamp is placed in their passport. If "obligated persons" commit systematic violations of labor discipline, they may be sent to an MLC. These individuals are subject to administrative arrest

99. http://naviny.by/rubrics/politic/2004/11/18/ic_articles_112_137984/
100. Presidential Speech made at a meeting of judges on March 25, 2008, http://president.gov.by/press55949.html#doc
101. Presidential Speech made at a meeting on state child care in August 2006, http://www.belaruspartisan.org/life/104432/

for avoiding such work, and they may even be held criminally responsible, have restrictions placed on their freedom, and be sent to an open-type institution with compulsory participation in labor. President Lukashenko has himself spoken favorably of the need to create labor camps for individuals who have been deprived of their parental rights.

Every year, the parents of over 4,000 Belarusian children are deprived of their parental rights. Below is a table showing statistics from the National Statistical Committee of the Republic of Belarus.[102]

Number of children whose parents have been deprived of parental rights

	2005	2008	2009	2010	2011
Number of children	5,681	4,980	4,715	4,362	4,462

In no way do these measures fit with the task of providing the greatest possible protection to the interests of the child, but instead they have the goal of forcing "negligent" parents to be financially responsible for the upbringing of their children under threat of punishment. In addition to being deprived of their parental rights through a relatively simple procedure that is mostly handled by patrolmen, parents who are obligated to pay a certain amount of compensation to the government every month. This money, meanwhile, does not go directly to serve the needs of a specific child and does not in any way foster connections between the parent and the child, but instead has the sole purpose of compensating the government for its expenses.

In an Expert Opinion on the Issue of Forced Labor in the Republic of Belarus[103], the Belarusian Helsinki Committee notes that Law No. 37-Z of the Republic of Belarus "On the Introduction of Amendments and Additions to some Legislative Acts of the Republic of Belarus on the Issue of Compensation of Funds Spent on the Maintenance of Children in State Child Care," dated July 19, 2005, introduced corresponding amendments and additions into the Labor Code, the Marriage and Family Code, the Code of Civil Procedure of the Republic of Belarus, and the Criminal Code of the Republic of Belarus. These amendments introduced the practice of full compensation of funds spent by the state on the maintenance of children in state child care, facilities, as well as liability for the evasion of such responsibilities. The size and structure of the expenses shall be set by the Government of the Republic of Belarus.

The funds for compensating the state for expenses related to maintaining children in state child care facilities shall be paid into the budget that is used to fund state orphanage institutions, specialized state institutions for juveniles in need of social support and rehabilitation, specialized state high schools, professional and technical schools, and universities, or monthly payments are made (to family-type children's homes, children's villages, foster families, and adoptive families).

In accordance with Article 11(5) of Law No. 125-Z "On the Employment of the Population of the Republic of Belarus," issued June 15, 2006 (with amendments dated December 29, 2006), "the state shall provide employment to parents, who are obliged to compensate the state for expenses related to the maintenance of children in state child care facilities, and who have been sent under a court decision to state employment agencies by reserving a time for their hiring."

Obligated persons who are unemployed or who are working but are unable to pay full compensation to the state for the maintenance of children are subject to employment under the procedures established in Paragraph 14 of Presidential Decree No. 18 dated November 24, 2006.[104] Amendments and additions were made to this decree on the basis of Presidential Decree No. 5 dated May 5, 2009; Presidential Order No. 143 dated March 9, 2010, Presidential Decree No. 6 dated June 27, 2011; and Presidential Decree No. 2 dated February 23, 2012.

102. From the Statistical Compendium "Children and Youth in the Republic of Belarus," http://belstat.gov.by/homep/ru/publications/children_and_youth/2012/about.php
103. http://belhelcom.org/en/node/13018
104. http://www.pravo.by/world_of_law/text.asp?RN=Pd0600018

Issues of employment for obligated persons shall be resolved by a court of law in a ruling on a court order to collect expenses for the maintenance of children and decisions on deprivation of parental rights and removal of children without deprivation of parental rights. Under Article 44(5) of the Labor Code, a court ruling on employment for an obligated person is grounds for his dismissal from his previous place of work.

When an obligated person who is staying in an MLC or who has been released from a detention facility needs employment, the administration of the MLC or the MIA correctional institution must, three months prior to the end of his stay or his release, inform the court of law in the district of the obligated person's habitual residence, internal affairs agencies, and state employment agencies of this and send the court enforcement documents on the day this individual is released.

In these cases, obligated persons subject to employment are escorted to their habitual residences by a worker from the MLC or MIA correctional institution. Employment of these persons is made on the basis of a court ruling issued to ensure the fulfillment of enforcement procedures. The court's corresponding ruling must be issued within five business days from the day on which the court receives the enforcement document.

The court ruling on employment of the obligated person shall be sent, within three days of its issuance, to internal affairs agencies and state employment agencies for the obligated person's habitual residence, and if such habitual residence is unknown, for the location of the court, to select an organization to find this person employment, and is subject to immediate execution. State employment agencies have three days to find one or several organizations to employ the obligated person. As part of this process, organizations are selected in such a way that the wages of the obligated person will be high enough to ensure full payment of monthly obligations to compensate the state for the maintenance of children and also to ensure that no less than 30 percent of wages are guaranteed to the obligated person.

The obligated person must report to the organization and begin work no later than one day following the day on which she/he receives her/his assignment from the state employment agency. The hiring of the obligated person subject to employment under a court ruling shall be carried out on the basis of an assignment made by the state employment agency. Internal affairs agencies ensure that unemployed, able-bodied obligated persons appear at state employment agencies and for work at an organization. Employers may not refuse to hire obligated persons sent to them by state employment agencies, and obligated persons may not refuse to perform work.

Employers, internal affairs agencies, and state employment agencies work together to monitor the appearance of obligated persons at work each day. Organizations where obligated persons work must inform the court executing the court ruling or the notary enforcement document and internal affairs agencies of the obligated person's systematic failure to appear at work if all possible measures to ensure her/his appearance and performance of work obligations have been exhausted.

Work performed by obligated persons on the basis of a court ruling shall end after the obligated person has compensated the state in full for the maintenance of children or after these persons have found employment on their own that offers wages exceeding the wages at the place of work offered.

Parents may be held administratively liable for avoiding job placement under a court ruling (Article 9.27 of the Administrative Offences Code of the Republic of Belarus: Avoidance by parents of job placement under a court ruling).

A repeat violation made within one year after prosecution for administrative liability results in criminal liability. Article 174 (2) and (3) of the Criminal Code stipulates criminal liability for parents who avoid reimbursing the state for funds spent on maintaining their children in state child care facilities. Such criminal liability includes not appearing for work 10 or more times over the course of three months,

obscuring or understating the size of wages and equivalent income, or avoiding job placement under a court ruling, committed within one year after the imposition of administrative penalties for the same violation, which results in failure to meet in full or in part monthly obligations to reimburse the state for funds spent on maintaining their children in state child care facilities and shall be punishable by community service or corrective labor for a period of up to two years, arrest for a period of up to three months, restrictions on freedom for a period of up to three years, or deprivation of freedom for a period of up to one year.

Actions listed in parts one and two of this article that are committed by an individual who has been previously convicted of avoiding to support his or her children or reimburse the state for funds spent on maintaining children in state child care facilities shall be punishable by corrective labor for a period from one to two years, arrest for a period of up to six months, restrictions on freedom for a period from one to four years, or deprivation of freedom for a period of up to two years.

The footnotes to this article specify that "In this article, avoidance of job placement under a court ruling means avoiding appearing at labor, employment, and social welfare agencies, arranging for job placement, undergoing a medical exam, acquiring documents necessary for job placement, as well as other wilful actions (failures to act) that result in failure to fulfill the court ruling on job placement".[105]

In accordance with Decree No. 18, the obligation to compensate the state for the maintenance of children begins on the day a child is placed in a state child care facility and ends after the expenses have been repaid in full, if the parents die, or under a court decision should circumstances arise that release parents from compensating the state for the maintenance of children.

Moreover, in addition to compulsory labor and withholding of up to 70 percent of wages for the state treasury, in accordance with paragraphs 15 and 16 of Decree No. 18 "under lawsuits filed by local executive or regulatory agencies, or by organizations authorized by them to file lawsuits, obligated persons may, through court proceedings, be evicted from their living quarters in a state or private housing facility with assignment of living quarters with a smaller square footage or of lesser quality, including outside the limits of the given locality, for a period indicated in the court decision." The living quarters from which the obligated person has been evicted are assigned to his or her children under the procedures established by the Council of Ministers and may be rented out under (sub) lease agreements to other individuals in accordance with Paragraph 16 of this Decree. Living quarters vacated in this manner that are owned by obligated persons or occupied under lease agreements, shall be rented out under agreements with local executive agencies for residence by other individuals. Money received from renting out living quarters is not subject to income tax from individuals and is transferred under the terms and procedures determined by the Council of Ministers so that obligated persons who own or lease living quarters may repay expenses for the maintenance of their children. Moreover, the authorization of an obligated person who owns the living quarters is not required to rent out the premises.

As Elena Klichkovskaya, deputy chairman of the Homiel City Executive Committee, stated in comments about her city's experience, "since Decree No. 18 came into effect, the city's housing authorities have filed 32 petitions regarding the eviction of obligated persons, 23 of which have been satisfied. Currently 15 locations are being subleased. So far this period, we have received 66,547,017 Belarusian rubles from renting out living quarters."[106]

It seems that the measures taken by the authorities in relation to parents from socially disadvantaged groups have not in any way improved the situation for children themselves. Moreover, attempts at compulsory employment for obligated persons are reportedly not working. One person interviewed by the mission spoke about the difficulties faced by companies where obligated persons are sent to work under the control of police officers. Frequently these persons are unable to work and cannot perform

105. Website of the Belarusian MIA: http://mvd.gov.by/main.aspx?guid=47563

106. http://newsgomel.by/%D0%BE%D0%B1%D1%89%D0%B5%D1%81%D1%82%D0%B2%D0%BE/pomoch-roditelyam-zashhitit-detej.html

tasks assigned to them due to their dependence on alcohol or drugs. But these companies do not have the right to reject these workers.

Wages that obligated persons actually receive after money for the state treasury is withheld are not enough to cover the cost of living. For most of these people, their paths lie either through prison or through medical-labor centers.

> *"As of December 31, 2012, 13,243 obligated persons were registered on preventative lists at territorial agencies (this figure stood at 13,326 for 2011). Of these people, 13,100 or 98.9 percent are employed at companies and various forms of organizations. Seven thousand ninety-six people were added to these lists (as compared to 7,758 added in 2011), and 5,249 were delivered to labor, employment, and social protection agencies.*
>
> *In 2012, 2,668 unemployed obligated persons who had been absent for an extended period from their habitual residences and whose whereabouts were unknown were declared wanted by courts,*
>
> *and 2,687 were found (these figures stood at 2,751 and 2,763 respectively for 2011). One thousand three hundred thirteen obligated persons were sent to MLCs, as compared to 1,349 in 2011.*
>
> *One thousand six hundred sixty-nine obligated persons were charged with criminal liability under Article 174 of the Criminal Code. Administrative measures were applied to 730 of these people."*[107]

Legal analysis

The cases of labor performed by persons obligated to compensate the state for the maintenance of children in state child care do not fall under the provisions stipulated in Article 2(2) of ILO Convention No. 29, contravene Article 4(41) of the Constitution and Article 13 of the Labor Code, and therefore must be classified as forced labor. Most of ILO's key indicators to define forced labor are applicable to this situation, including the withholding of wages, the abuse of vulnerability, restricitions of freedom of movement and intimidation and threats (with the risk of imprisonment as per article 174 of the criminal code). Furthermore, decree No.18 allows for forced evictions that would not meet requirements needed to justify exceptions under article 11 of the ICESCR.[108]

Moreover, they contravene obligations protected under the ICCPR, such as the right to liberty and security and the right to freedom of movement.

As far as children's rights are concerned, the Committee on the Rights of the Child, in its 2011 Concluding observations, has already noted that it was concerned "at the high number of children separated from their biological families and the inefficiency of measures to enhance parents' capacities for the performance of their child-rearing responsibilities, prevent separation and encourage family reintegration. Moreover, the Committee is concerned that the separation of a child from his or her parents against their will pursuant to Presidential Decree No. 18 may not always be done in the child's best interests."[109]

Overall, the report has shown widespread discrimination towards people suffering from drug or alchool dependency. Rather than tackling the root causes of such dependencies and accompanying affected individuals through appropriate programs meant to support them with due regard to their social rights, as well as to ensure the protection of their children's rights, affected individuals end up stigmatized and deprived of their fundamental rights.

107. http://mvd.gov.by/ru/main.aspx?guid=13921
108. See the interpretation of the Committee in General Comment no.7: The right to adequate housing (Art.11.1): forced evictions: 20/05/1997. CESCR General comment 7. (General Comments)
109. Convention on the Rights of the Child, concluding observations, CRC/C/BLR/CO/3-4, 8 April 2011

VIII. Forced labor in the penal system

Labor is an integral part of the penal system of the Republic of Belarus, too. For a fuller understanding of the system of utilizing the labor of prisoners, it is appropriate to briefly introduce the rather complicated penal system used in Belarus.

Civilian control over this closed system, where not even the International Committee of the Red Cross is allowed, is practically absent. Human rights defenders from the organizations which monitor the situation with human rights in places of detention are thus forced to work only with released prisoners or through censored correspondence.

At the same time, Belarus holds one of the highest places in Europe and in the world for the number of prisoners per capita. In late 2011, the number in Belarus amount to 405 [imprisoned] people per 100,000 population.[110]

In Belarus, according to the National Statistical Committee, the number of people being held in places of detention in late 2011 was 38,410 (in a country with a population of fewer than 10 million people). Of these, 29,983 people were being held in correctional facilities for adults, with obligatory labor activity (2,630 women and 27,353 men), 674 people were in prisons, 7,368 people were in pre-trial investigation centers and jails.[111]

The conditions of detention and labor in prisons therefore affect thousands of citizens in this country. For more detail on the conditions of imprisonment in places of detention, see the report of FIDH[112] and HRC Viasna Human Rights Center[113]. This chapter will devote attention to problems directly connected with the labor activity of prisoners – given the existence of a broad spectrum of violations of prisoners' rights in all other areas of their incarceration.

The structure of the penal system

The system is controlled by the Ministry of Internal Affairs (MIA) of Belarus. Its Department of Corrections (DOC, or commonly called DIN as for its Russian abbreviation) is an organization that oversees the execution of all types of punishment and the correctional institutions that execute all types of punishment.

Institutions in which citizens condemned by a court serve their sentences

Juvenile correctional facilities (JCF)

Institutions in which children and teenagers who have committed crimes before reaching the age of 18 (juveniles) are usually held. Criminal liability in the Republic of Belarus begins as of 16 years of age (14 years of age for some crimes), and as of this age a teen may be housed in a JCF. In JCFs, instruction is provided for juveniles who have not completed their schooling, based on a program of secondary school and vocational technical training (for those who desire it). Teenagers in JCFs do not work or work at will.

110. ttp://www.prisonstudies.org
111. Statistical Compendium «Legal Violations in the Republic of Belarus» (Minsk, 2012)
112. FIDH (International Federation for Human Rights). Prison Conditions in Belarus. September 2008. http://www.fidh.org/ru/Vostochnaya-Evropa-i-Central-naya/Belarus,1192/Doklad-ob-usloviyah-soderzhaniya-v
113. Viasna HRC. Report on the results of monitoring a detention facility in the Republic of Belarus. Minsk, 2013. http://spring96.org/files/book/ru/2013_prison_conditions_ru.pdf

Prisons
Institutions in which individuals sentenced to a penalty of institutional treatment are held. Prisoners are located in cells, which they may normally leave for only an hour a day for a walk. Individuals who have been recognized by the court as especially dangerous recidivists, individuals who have received a life sentence, and individuals whose sentencing conditions have been changed due to "systematic violations of the regime for serving a sentence" serve their time in prisons.

Correctional facilities (CF)
Institutions (this form of punishment is used for the greatest number of inmates) are considered less harsh than prisons as a form of punishment, but they include mandatory labor. Convicts live in a dormitory, in small facilities containing, as a rule, 10 to 50 other inmates. A single building may contain up to 4 brigades, and the area near the building is fenced in, and the convicts may move around within this area without being escorted by CF employees. Convicts may move around the territory of the CF to the canteen, to work, to the sports center, club, and clinic only when escorted by facility employees. Independent movement carries the threat of being cited for a breach and immediately placed in solitary confinement (SC). CFs may be maximum security, medium security, or minimum security. There is also a supermax CF.

Solitary confinement (SC)
This is a place where convicts facing disciplinary penalties are held. Prisoners are placed in it at the decision of the head of the CF, without the involvement of a court, for a period of up to 10 days and nights. When the 10-day period is up, the convict must without fail be removed from SC, but quite frequently it is only so he can be sent back there again. Any trivial thing or any excuse (an undone button, for example) may serve as a violation punishable by SC. SC is used, among other things, as a means of intimidating inmates who attempt to insist on their rights.

Penal colony settlements (PCS)
Institutions in which citizens who have been convicted of crimes committed through negligence and sentenced to deprivation of freedom with sentences served at a PCS, as well as citizens transferred from correctional facilities under a procedure of "change of detention regime". Citizens have the opportunity to move about the PCS territory, they live, as a rule, in the living quarters of the penal colony settlement (a dormitory), and they do not leave the territory of the institution without permission from the administration.

There exists, however, the opportunity to live outside the territory of the institution, provided a mandatory daily entry is made in the institution administration's log. All citizens located in a PCS shall without fail seek employment outside the institution and are delivered to work and back by special transportation.

Pre-Trial Investigation Centers (PTIC)
Institutions in which citizens are held while under investigation and during the period of court hearings, as well as following the issuance of a sentence and before it takes effect.

Open-Type Correctional Institutions (OTCI)
Institutions in which citizens sentenced to "punishment without being sent to a closed-type correctional institution," and citizens who are transferred from correctional facilities under a procedure of change of detention regime, serve out their sentence. Convicts have the opportunity to move about the territory of the OTCI, and they live, as a rule, in the living quarters of the open-type correctional institution (dormitory) and do not leave the open-type correctional institution without the permission of the administration of this institution. All citizens located in an OTCI shall without fail be found employment by the administration, as a rule in low-paying jobs, either in the OTCI itself or outside its confines. This type of sentence is better known to the populace as "Khimiya", thus named in the Soviet years, when people serving this type of sentence were sent to harmful chemical factories.

Jails (Arestnyj dom)

Institutions for those serving a sentence of "arrest". Jails are located on the territory of PTICs, prisons and correctional facilities and are entirely similar to pre-trial investigation centers (see above), the only difference being that "arrest" may be imposed under the Criminal Code for a period of time not to exceed six months. Individuals sentence to "arrest" are subject to the same detention conditions established for those sentenced to deprivation of freedom and serving a sentence at a minimum security prison.

Legal acts regulating status in detention facilities

The legal status of those located in detention facilities is mainly governed[114]:

– for persons arrested on suspicion of committing a crime: by the Rules of Internal Order of temporary detention facilities of internal affairs bodies approved by Resolution No. 234 of the Minister of Internal Affairs of the Republic of Belarus dated 10/20/2003;

– for persons held under arrest while awaiting trial: by the Law of the Republic of Belarus dated June 16, 2003 "on the Procedures and Conditions of Detention of Persons in Custody," by the Rules of Internal Order of the pre-trial investigation centers of the criminal enforcement system of the MIA of the Republic of Belarus (RIO PTIC) approved by Resolution No. 3 of the MIA of the Republic of Belarus dated 1/13/2004 and by the Rules of Internal Order of the pre-trial investigation centers of the state security bodies of the Republic of Belarus, approved by Resolution No. 37 of the Committee for State Security of the Republic of Belarus dated 8/10/2013;

– for persons convicted of capital crimes: by the Criminal Enforcement Code (CEC), by the Rules of Internal Order of Correctional Facilities (RIO CF) approved by Resolution No. 174 of the MIA of the Republic of Belarus dated October 20, 2000;

– for persons arrested before trial and sentenced to administrative arrest: by the Procedural-Executive Code of Administrative Offences (PECoAO), the Rules of Internal Procedure of special institutions of internal affairs bodies executing administrative penalties in the form of an administrative arrest, approved by Resolution No. 194 of the MIA of the Republic of Belarus dated August 8, 2007.

In the system of execution of sentences of the Republic of Belarus, labor is provided for in the following institutions (except the Medical-Labor Centers (MLC) examined above):

1. Job placement in **open-type correctional institutions (OTCI)** and in **Penal colony settlements (PCS)** is organized on conditions built into the Criminal Enforcement Code (CEC) of the Republic of Belarus:

Article 47. The procedures for the execution of a sentence of restriction of liberty to be served in an open-type correctional institution…
3. Convicts serving a sentence of restriction of liberty to be served in an open-type correctional institution are under supervision and are obliged:
1) to follow the Rules of Internal Order of Open-Type Correctional Institutions;
2) to work under the direction of the administration of the open-type correctional institution.

Similarly, chapter 63 establishes the specifics of sending convicts to labor in penal colony settlements:
332. Convicts serving a sentence in penal colony settlements are used for labor in the enterprises of these institutions or in other organizations regardless of their forms of property, provided that the supervision of their conduct is guaranteed.

333. In some cases, with the permission of the head of the penal colony settlement, convicts are allowed to go to work outside the confines of the penal colony settlement.
(clause 333 in the version of MIA Resolution No. 84 dated 3/21/2005).

114. HRC Viasna. Report on the results of monitoring a detention facility in the Republic of Belarus. Minsk, 2013. http://spring96.org/files/book/ru/2013_prison_conditions_ru.pdf

These procedures are also established in the Rules of Internal Order (RIO) of Open-Type Correctional Institutions (OTCI):
12.Convicts are obliged:
12.1. to perform the duties prescribed by criminal enforcement law in relation to the procedures and conditions of serving sentences, and to meet the legal requirements of the administration of the institution;…
12.3. to follow these Rules; and
12.4. to work under the direction of the administration of the institution.

As the FIDH and HRC Viasna mission were told by employees of Platform Innovation, in practice, if a convict has no penalties or violations, and if there are no conflicts with the administration, convicts may also reach an agreement to work in other organizations located near the OTCI or PCS. In most cases, however, convicts are placed in jobs under the direction of the administration. If a directive arrives from the MIA or the DOC to send convicts to work at certain enterprises needing manpower (to the Minsk Tractor Plant, for example), then convicts are removed from all jobs and transferred to other OTCIs (closer to the enterprise) and sent to work at said enterprise.

Transportation to work in institution vehicles is provided where convicts are unable to reach their place of work independently, or where a large number of convicts works at one enterprise (kolkhoz, farm). As a rule, convicts work in great numbers at kolkhozes that are not easy to reach due to a lack of regular transportation routes. Therefore the conveyance of prisoners in busses that drop off or pick up convicts from several kolkhozes along the way (farms, households or organizations) is organized.

2. Convicts' work in the **jail** conditions is governed by the CEC of the Republic of Belarus, Article 60. Using arrested persons for work.

1. Those sentenced to arrest who must reimburse the state for funds used to maintain their children in state child care facilities must work in the places and at the jobs determined by the administration of the arrest home or the penal system institution on the grounds of which the arrest home is located. The labor of such individuals is organized in accordance with the procedures and conditions established by this code in relation to individuals sentenced to punishment in the form of deprivation of freedom.

2. The administration of the arrest home has the right to engage individuals sentenced to arrest in the performance of maintenance and upkeep work for up to 10 hours a week, but not for more than two hours a day without pay. The individuals specified in part 1 of this article shall engage in such work during hours when they are free from their jobs, while men over the age of 60 and women over the age of 55 may perform such work on a voluntary basis.

As representatives of Platform Innovation recounted, this means in practice that a convict in a jail may be used for work only on improvements, whereas other forms of work in jail conditions are not stipulated. This has to do with to the absence of production spaces in which inmates could work and the short durations of sentences (a period of arrest of up to 6 months), which do not enable convicts to earn a new credential.

3. Labor in **PTIC** conditions is governed by the RIO of the PTICs of the MIA criminal enforcement system.

Chapter 14 Sending persons held in custody to work
150. Persons held in custody, at their request and given the appropriate conditions, may be used for work only within the confines of the PTIC territory.
151. The working conditions must meet the requirements of isolation, security and sanitary rules.
152. If there is no possibility in PTIC of placing a person being held in custody in a job, he is given appropriate explanations.
153. Work cells are placed, as a rule, in separate buildings and only within the confines of the guarded area of the PTIC.

Most prisoners in PTIC do not work.

4. Labor in **prison conditions** is governed by CEC, which states:
Article 98. Using persons sentenced to imprisonment for work
1. Every person sentenced to imprisonment must work in the places and at the jobs determined by the administration of the correctional institutions. ….
3. The labor of convicts serving a prison sentence in a prison shall be organized only on the territory of the prison.
The Rules of Internal Order of Correctional Institutions explain:
2. The rules are mandatory for convicts held in CI [correctional institutions], CI administration, military service people guarding and supervising convicts, and for persons visiting these institutions. **Any breach of these Rules will entail the liability stipulated by the laws of the Republic of Belarus.**

Chapter 64. Particulars of using convict labor in prisons
334. Persons sentenced to imprisonment and held in prisons shall be used for work within the limits of guarded territories. It is forbidden to take convicts serving sentences in prisons to jobs beyond their boundaries. It is forbidden to send such convicts to do maintenance work.
335. Where needed, a prison administration may send convicts to repair and construction jobs on the territory of prisons provided. These convicts are strictly isolated from convicts kept to perform maintenance work.
336. Production shops in prisons are located in isolated premises within the limits of the guarded areas.
337. Where it is impossible to utilize convicts serving prison sentences in jobs involving going out to production shops, they may be used for work in cells subject to the requirements and norms of labor protection.
338. The work of convicts in prisons is organized taking into account the distinct content of the various categories of convicts.

To perform maintenance duties in prison and PTIC conditions, according to CEC, the following types of convicts may remain in the given institutions to serve their sentences:
Article 67. Leaving persons sentenced to imprisonment in a PTIC or prison
1. Persons sentenced to imprisonment for a period of seven years or less, to be served in conditions of standard or medium security, who have not previously served a prison sentence, may with their consent be kept in the PTIC or prison to perform maintenance work.
2. Persons sentenced to imprisonment shall remain to perform maintenance work at the decision of the head of the PTIC or prison, who must have the written agreement of the convicts.

3. Persons sentenced to imprisonment who have been kept in a PTIC or prison to perform maintenance work shall be kept in unlocked general cells separate from other persons who are [operating] under the conditions of the same regime, which was determined for them by a court, and shall enjoy the right of a daily walk lasting at least two hours.

6. In conditions of **life imprisonment**, convicts may also work, which is governed by the CEC:
Article 173. Procedures and conditions for the execution of a sentence of life imprisonment
1. Convicts serving a life sentence are detained in cell-type rooms or in the ordinary living quarters of a strict-security correctional facility and prison cells and wear a special type of clothing.
2. Persons sentenced to life imprisonment are kept in the cell-type rooms of a strict security correctional facility [and] prison cells, as a rule, with no more than two people. At the request of a convict and in other necessary cases upon the order of the head of the correctional facility or prison, if a threat arises to the personal safety of a convict, he may be kept in a single room. The work of such convicts is organized taking into account the requirements of keeping convicts in cells (i.e., as in prison conditions).

7. Labor in **SC or CTRs** (cell-type rooms) is governed by CEC:
Article 114. Conditions of detention of persons sentenced to imprisonment in SC, CTRs and solitary cells
1. Persons sentenced to imprisonment who are placed in SC are forbidden to have lengthy visits or telephone conversations, to purchase food and necessities, to receive packages, messages, and small parcels or boxes, to send and receive letters, to use board games and to smoke. They are not issued bedding or allowed to take walks.

3. Convicts who are placed in SC and those transferred to cell-type rooms or solitary cells work apart from the other convicts.

In practice, convicts are far from always brought out from SC to work, although the CEC provides for such occasions.

8. Labor in **correctional facilities** (CF) is governed by the Rules of Internal Order of Correctional Institutions (OTCI)

As part of the mission conducted by FIDH and HRC Viasna, employees of Platform Innovation sent an inquiry to the DOC of the MIA of the Republic of Belarus (DOC MIA ROB) about the legislative ground for calculating wages (and withholding therefrom) in places of detention and places of restriction of liberty. They received a detailed reply (Attachment No. 1), which explains the legal basis for the labor of prisoners, the payment of salary to them and the processing of withholdings therefrom.

> *"Pursuant to Article 50 of the Criminal Enforcement Code (hereinafter "CEC"), persons sentenced to imprisonment shall be used for work in organizations regardless of their forms of property, including with individual business owners. The labor of convicts shall be governed by the laws of the Republic of Belarus on labor and on the protection of labor, with the exception of the rules for hiring, firing and transferring to another job. Working time during the period of serving said sentence shall be included in the [person's] work record under the procedure prescribed by the laws of the Republic of Belarus.*
> *Pursuant to Article 98(1) of the CEC, every person sentenced to imprisonment is obliged to work in the places and at the jobs determined by the administration of the correctional institutional. The administration of the correctional institutional must send convicts to socially useful labor taking into account their gender, age, ability to work, health and, where possible, their specialization. Convicts shall be used for work at enterprises or in the production shops of [the] correctional institutions, as well as at other enterprises, regardless of their forms of property, provided that proper guarding and isolation of the convicts is guaranteed. When convicts are used for labor, no labor agreement (contract) is entered into with them.*
> *Pursuant to Article 100 CEC, persons sentenced to imprisonment shall be entitled to payment for their work in accordance with the laws of the Republic of Belarus. The amount of pay for the work of convicts who have worked their monthly norm of working time and have fulfilled the output quote prescribed for them cannot be lower than the amount of payment provided for by the laws of the Republic of Belarus for commensurate work. Payment for the work of convicts in the case of a partial workday or partial workweek shall be made proportionally to the time worked by them depending on their output. The wages of convicts shall be indexed under the procedure and on the conditions stipulated by the laws of the Republic of Belarus.*
> *In accordance with Article 102(1-3) of the CEC, the wages and equivalent income of persons sentenced to imprisonment shall be subject to withholding to cover the cost of food, clothing and footwear (except for the cost of special food and special footwear) and public utilities. The cost of food and public utilities not withheld in a reporting month from persons held in correctional institutions, in the event they have insufficient wages and equivalent income, shall not create debt and shall not be withheld in subsequent months. The said cost shall be written off to expenses for the operating budget of the correctional institution. Compensation by convicts of expenses for their maintenance shall be made after withholding income tax, mandatory insurance dues to the Social Security Fund of the Ministry of Labor and Social Protection of the Republic of Belarus, alimony to support underage children, and funds to repay expenses paid by the state to support children who are on social security. Withholdings based on the enforcement documents is made from the remaining amount under the procedure prescribed by the State Procedure Code of the Republic of Belarus. In correctional institutions, with the exception of penal colony settlements, a minimum of 25 percent of accrued wages or other income is deposited to their personal account of convicts, regardless of all withholdings, and to the personal account of convicted men over 60 years of age and women over 55 years of age, and convicts who are category I and II invalids, underage convicts, pregnant women convicts, and convicted woman who have children in orphanages of the correctional facility – no less than 50*

percent of their accrued wages or other income. To the personal account of convicts who are obliged to repay expenses paid by the state to support children who are on social security is credited no less than 10 percent of accrued wages and other income. Persons sentenced to restriction of liberty shall independently repay the cost of public utilities by paying cash to the cashier's office of an open-type correctional institution or by money transfer to the settlement account of the institution."[115]

The situation in real life is far from the questionable – from the point of view of international law – regulations and legislative acts that govern the work of prisoners.

In practice, in correctional facilities there is essentially no choice of the type of work. Work frequently becomes a means for the administration to pressure prisoners it does not like – they are deliberately sent to a job that does not suit them for punitive purposes. Because a breach of the rules of internal order is punishable, refusal to work is fraught with a variety of punishments, up to and including criminal punishment in case of systematic failure to fulfill the administration's requirements.

The Criminal Enforcement Code of the Republic of Belarus, in Article 98 (Sending persons sentenced to imprisonment to labor) clearly indicates:
6. Refusal to work or unauthorized work stoppage is a malicious breach of the established procedures for serving one's sentence and shall entail the application of sanctions.

Refusal to go out to work, regardless of the reasons, is equivalent to the most serious breaches of the detention regime and threatens the convict with placement in solitary confinement.
Despite the statement in the DOC response to the query from Platform Innovation that *"Pursuant to Article 98(1) of the CEC, every person sentenced to imprisonment is obliged to work in the places and at the jobs determined by the administration of the correctional institutional,"* official statistics show that the ratio of individuals held in penal system institutions and engaged in paying work to the total number of convicts held in penal system institutions in 2012 is equal to 63.2 percent.[116]

Besides, de facto, if they reach an agreement with the administration, convicts can avoid going to work. Among the former prisoners interviewed by Platform Innovation, some did not go to work at all but were counted as having worked and received "wages" of nearly 20 Euro cents. Apart from the "privileges" of individual groups of prisoners, this is also linked to the fact that the output produced by the facilities is not always of suitable quality and is not sought after. In many facilities, therefore, production spaces are reduced, eliminated or stand idle. It becomes impossible to guarantee the work of 100 percent of prisoners under such conditions, but facility administrations nevertheless strives for this, sometimes taking out to work entire working brigades, which spend a certain amount of time in the industrial area, then return to the brigade's territory without having worked.

Certain categories of convicts, however, who have outstanding claims and debt for child support, are obliged to work regardless of the work situation in the facility as a whole. Such categories of convicts are assigned to work without considering, in most cases, the level of professional training of each prisoner or even the state of his health and his physical ability to perform the proposed work.

Payment for prisoners' work

It is worth highlighting the fact that work agreements (contracts) are not entered into with prisoners (Article 98 of the Criminal Enforcement Code of the Republic of Belarus). Wages are established independently by the organizations that engage convicts for work (in the case of correctional facilities, these are the Republic [national] unitary enterprises that are subordinate to the DOC of the MIA of the Republic of Belarus). The absence of independent oversight over the bookkeeping of such enterprises leads to convicts being deliberately signed up for low-paying jobs. Some of the cases of Platform Innovation reveal evidence of convicts

115. From the reply of the Department of Corrections of the Ministry of Internal Affairs of the Republic of Belarus to the request from Platform Innovation.
116. Violations of the Law in the Republic of Belarus. Statistical Compendium. Minsk. 2013.

being hired for a job, then unofficially having to perform utterly different work assignments, evidence of the intentional raising of product output quotas and lowering of the quality of the output produced by a convict, of intentional understating of piecework rates for manufactured products, reductions of time actually worked in payment documents, etc. As a result of such practices, payments for the work of convicts remains low practically everywhere, but when appeals are sent to the DOC of the MIA of the Republic of Belarus and they audit the correctness of wage calculations, no violations are discovered.

Moreover, convicts are not given wage payment sheets, or if they are given them, they do not contain a detailed accounting of standard working hours, output norms, the minimum pay rate for commensurate work or even the name of the position held by the convict (the name of the work or jobs performed by the convict), making it impossible to determine just what types of work a convict was paid for and at what rates. Statements of gross payroll amount that are issued after a convict's release from his/her place of detention likewise do not contain information on the position held or jobs performed by a convict.

In the opinion of Platform Innovation, prison labor at present "is practically slave labor"[117], without respectable pay, basic working conditions, safety equipment or the right to choose one's type of occupation, and given a six-day workweek (26-27 workdays a month). On top of all this, the facility takes deductions from prisoners' wages for their upkeep and food, as a result of which convicts frequently receive a mere 25 percent of their meager earnings in their personal account.[118]

According to the results of a survey by Platform Innovation, prisoners in CF No. 2 were used for work in the following types of production: woodworking, metalworking, sewing, industrial rubber, manufacturing emblems and insignia, and custom resources.

> *Convict S. was in CF-2 from 2009 through March 2013, and for 3 years he manufactured emblems and insignia. His wages for the period 2009-2013 were about 7-10 U.S. dollars (20,000 – 80,000 Belarusian rubles) [a month], and deductions were taken from his wages, with the result that 5,000 – 20,000 Belarusian rubles were deposited to the convict's account (2-3 dollars). Payment for work was made without issuing payment sheets, and therefore convicts' wages could be calculated only based on the funds transferred to their personal accounts. Convicts did not sign off on any [payroll] records or time sheets.*
> *When convicts were being assigned to brigades, no one asked whether a convict wished to work in some other factory. S. describes working conditions as dreadful: no protective gear was issued for airways, mucous membranes or skin from noxious production ingredients, the ventilation system did not function, and the working areas were inadequately heated in wintertime. Output norms were overstated, and it was impossible to fulfill them. The workday was 10 hours long (with a 1-hour break at lunchtime), and work outings took place on weekends (Saturdays).*
> *Following his release in March 2013, S. asked the accounting department of CF-2 to give him an income statement for the period worked, but no statement was issued. Accounting department employees explained their refusal by saying that such statements are issued upon receiving a request from a new employer or from the public employment service.*[119]

> *Convict Z. is currently located at CF-3 (production: woodworking, sewing), and he works in the position of assistant brigade manager. His working day is not standardized, and his wages in April, May and June 2013 were 124,550 (14 dollars), 129,800 (15 dollars) and 120,100 (14 dollars) Belarusian rubles. 31,200 (3.6 dollars), 32,450 (3.7 dollars) and 30,000 (3.4 dollars) Belarusian rubles were transferred to the convict's settlement account, respectively. No payment sheets are issued, and convicts do not sign anywhere for the receipt of their wages.*[120]

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117. http://platformarb.com/uroki-vyzhivaniya-ik-20/
118. Monitoring report of Platform Innovation on problems in the area of conditions of prisoner detention in penal institutions of the Republic of Belarus 2011-2012. http://platformarb.com/zakonodatelstvo/zakonodatelstvo-respubliki-belarus/4077-2/monitoringovyj-otchyot-ipu-platforma/
119. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.
120. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.

Convict I. is in CF-4 (city of Homiel, sewing production). Since July 2012 she has worked as a nanny in the [baby] orphanage of the correctional facility. She was sent to this work because she is a qualified nurse. Her wages are about 500,000 Belarusian rubles (about 55-60 dollars). Because the convict has an underage child who is on welfare, she receives about 50,000 Belarusian rubles (5.5 dollars) a month. Payment sheets are handed to the convict personally, but she does not keep them.[121]

Convict S.D., who is serving his sentence at CF No. 14 (Novosady [possibly "garden cooperative"], production: metal-rolling, blacksmithing, metal goods, cast metallic molds, sidewalk tiles and concrete fences), stated that [his] wages in June 2013 came to 860,000 Belarusian rubles (98 dollars), but after withholdings, 90,000 rubles (10 dollars) were transferred to the convict's settlement account, due to the fact that his two underage children are dependents on the state. Wages for convicts are calculated for only 8 hours of working time, but convicts' workdays can be increased to 10 hours, and night shifts are not paid, either. Night shifts are scheduled for a week at a time, i.e., on such a shift, convicts work only at night for an entire week. The workweek is 6 days long, with Sunday the only day off. Payment sheets are not handed out in person, and convicts sign time sheets saying they worked 8 hours. At the same time, working conditions are very difficult: dim lighting in the workshop, high air temperature and lack of ventilation make even an eight-hour workday a very difficult ordeal. Opportunities for washing up after one's shift are limited (there is only one working shower, with too many workers wanting to use it, so not everyone gets to shower). On the positive side, though, he notes that work clothing [or "protective clothing"] is issued upon request and in any desired amount.

Convict P. is in CF-5 (city of Ivatsevichi, Production: woodworking, furniture making, foundry engineering, and clothing manufacture). From 2009 through March 2013, he worked the entire time as a seamster in a sewing workshop where outerwear was sewn. He was assigned to a brigade working on clothing manufacture, from quarantine, since he is a qualified seamster, and he did this same work as a free man, as well. Payment for work depends on output norms: when the quota was fulfilled, the wages in 2012 – early 2013 could be as much as 2,000,000 Belarusian rubles (around 235 dollars). After all deductions from wages, convicts received up to 500,000 Belarusian rubles (nearly 60 dollars) in their settlement accounts. Payment sheets were not issued to convicts, and at the end of each month they signed a time sheet for the number of days worked. After his release in March 2013 (having served his entire sentence), P. asked the CF-5 accounting office for an income statement for the period worked, but no statement was issued. Accounting department employees explained their refusal by saying that such statements are issued upon receiving a request from a new employer or from the public employment service in the place of residence.[122]
The convict sent a complaint to the DOC of the MIA of the Republic of Belarus (Attachment No. 2) and received a reply saying that his appeal (as that of a convict) to the accounting department of CF-5 was not recorded in the appropriate log, from which it follows that he never requested an income statement.

Moreover, it follows from the answer that "P." received that specialists from the DOC of the MIA of the Republic of Belarus verified the accuracy of the calculation of the convict's wages for the period February 2011 – November 2012 (it is not known why the calculation of wages was verified for such a short period of time), and the calculations and withholdings were made correctly. At present a request has been sent to the accounting department of CF-5 for an income statement for the period of the serving of the sentence. No reply to the request has been received to date.[123]

The convict P.K., who served a sentence in CF No. 20 (city of Mazyr, production: woodworking, furniture and door making, metalwork, clothing manufacture, manufacture of concrete fences and small architectural patterns) and was released from CF-20 in early 2013, said that there are not enough jobs at the facility for those who want them. In order to be able to report 100 percent employment

121. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.
122. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.
123. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.

of convicts at work, nonworking convicts in a brigade were taken out once a month to an industrial area, where they peeled the insulation off of copper wire [or "cables"]. The output norm per shift was 1 kg. of peeled copper, but no convict in the brigade ever fully met this quota. P.K. believes that the norms are deliberately overstated to avoid paying convicts money for work performed. It is typical that the work done in each shift by the convicts in the brigade was not recorded anywhere at all, while the amount of copper peeled by a single brigade came to at least 60 kg per shift. If you take into account that as many as ten "nonworking brigades" were taken out per month to peel copper, you can imagine that someone was receiving a real, full-fledged wage for peeling 600 kg. of copper a month. The convicts themselves received wages of 300-400 Belarusian rubles (0.03 – 0.05 dollars) for their work, and they signed no documents about the receipt or the calculation of the wages. In the facility where they worked, there were no doors, it was very cold in winter, and the convicts cleaned copper under very dim light, wearing nothing but quilted jackets. They were not issued any work clothing, and they peeled the wire using bits of knives and chisels without handles.

Safety conditions and injuries at work

There is frequently no safety equipment at enterprises. Injuries at work constitute an enormous problem in correctional facilities. Convicts suffer from work-related injuries every month at practically every facility, and many are left invalid.

Facility administrations assiduously conceal evidence of injuries at work, and injured convicts are forced to write letters of explanation admitting that they received the injury through their own fault, because they were not complying with safety rules.

Thus, the Republic [National] hospital of the DOC of the MIA, located on the territory of PTIC No. 1 (city of Minsk), repeatedly admitted convicts from various facilities (CF-10, CF-5, CF-19 and others) with injuries to the eyes, which, due to the lack of protective eyewear at work, had been hit by metal filings and wood shavings, injuring the eyes and leading in some cases to complete loss of sight. In conversations with hospital staff, [some] prisoners admitted that they had received their injuries due to the lack of protective goggles, but they stated that immediately after receiving their injuries, they were forced to write or sign a statement saying that they had been injured through their own careless attitude toward compliance with safety rules.

Also, the Republic [National] hospital of the DOC of the MIA quite frequently admits convicts from nearby facilities (CF-14 and CF-2) with fingers and parts of arms cut off by woodworking machines. Prisoner Vladimir I., who was serving a sentence in CF-8 (city of Orsha) and landed in the Republic Hospital after gangrene took hold in the stump of his right arm, which had been cut off by a saw, stated that after he was injured, facility staff were worried not about giving him first aid, but about the fact that his injury would prevent him from writing a statement that he had injured himself independently and had no claims against the facility.

In CF-2 (city of Babryusk), convict N. received head and facial injuries on a power saw bench, but the facility administration did everything in their power to conceal the reason for these injuries. The convict later admitted that he had been injured due to [his] careless handling of the equipment.

A political prisoner, Mikola Statkevich, who ran for president in the 2010 elections, broke his hand and injured some ribs on a board sawmill while at work in a correctional facility in the city of Shklou, due to the lack of protective clothing. No charges were brought against the guilty parties.[124]

Convict Z., serving a sentence in CF No. 10 (city of Novopolotsk, production: clothing manufacture, wood processing, metal processing, production of plastic wrap, corrugated packaging and soap making), currently does not work. After his arrival at the facility, he worked for over a year at a clothing manufacturer, to which he had been assigned immediately after quarantine. No one asked

124. http://www.fidh.org/IMG/pdf/political_prisoners_belarus_fidh_ru.pdf

the convict whether he wanted to work in this factory. After being injured at the clothing manufacture (he stitched several of his fingers on a sewing machine), he did not work for nearly six months, after which he was sent to a soap-making factory. In the spring, production at the soap factory was suspended, so he is not currently working.

Z. describes working conditions at the soap factory as dreadful: no protective gear is issued for the skin or mucous membranes, there is no ventilation in the factory, and the work is done by hand. No work clothing is issued, and the personal clothing in which it prisoners must work requires frequent cleaning, but there is nowhere to dry it, especially in the autumn and winter period, since the heat in brigade premises is turned on only at night. The rooms and pipes have no time to get warm, and everything is cold and damp. Dryers are not provided in the brigades.»[125]

A CF 5 prisoner told how, during his time in the facility from 2009 through 2013,

…night shifts, which did not count as working time at all, were practiced, as were work outings on weekend days, which were paid like regular workdays, working hours were increased (from 8:00 to 23:00, with two breaks for lunch and supper) but nowhere accounted for. The working conditions were intolerable: there is no ventilation at all in the workshop due to a persistent dust cloud hanging in the air from the rolls of fabric and lining material; no work clothing or protective gear whatsoever was issued; the temperature in the workshop reached + 40 degrees Centigrade in summer; convicts had to strip down to their underwear, for which they were then sent to SC; in winter it was so cold in the workshop that convicts' fingers became numb and rigid. The management of the workshop and factory treats the convicts extremely disrespectfully, and convicts are placed in SC at the least attempt to complain about their working conditions or pay.[126]

Convict K., serving a repeat sentence of imprisonment, is currently in CF No. 8 (city of Orsha, production: woodworking, metalworking, and clothing manufacture) and works at a wood processing factory, although while in quarantine he expressed a desire to work at the clothing manufacture. When asked, he described working conditions as "ordinary": no work clothing or protective gear, the temperature in the workshop in wintertime depends on the temperature outdoors and does not rise above + 15 degrees Centigrade (even when there is little frost outside), and there is no air vent, so convicts begin to cough over time from the fine wood dust. Frequent eye injuries occur due to the lack of protective goggles.[127]

Convict K., working in CF-8 at a metal processing factory, describes working conditions as "hard". He notes:

the lack of work clothing or protective gear. Many convicts injure their eyes with metal filings and various body parts (most often their arms) because of the lack of protective screens on the metal working machines. The lack of ventilation, inadequate heating of the workshop premises in the winter period, poor water supply and non-working showerheads that do not allow you to wash up after your work shift. Furthermore, when there are urgent orders, the workday is arbitrarily extended to 12-13 hours, and there have been cases when the workshop has worked essentially without any days off at all, but without being paid anything for the overtime and weekend days worked. Attempts by convicts to hold out for their right to a decent wage end in their being placed in SC and the application of Article 411 of the Criminal Code of the Republic of Belarus (increasing the length of a sentence for malicious insubordination to the requirements of the administration of the correctional facility that is executing a sentence of imprisonment).

In correctional facility № 12 (city of Orsha, production: clothing manufacture, furniture making and metalworking), according to information obtained from convict B, output norms are greatly overstated, especially given the fact that most of the convicts located in that facility have diseases such as hepatitis, HIV and tuberculosis. The work is done by convicts who are in a remission stage, but in the opinion

125. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.
126. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.
127. Testimony provided by Platform Innovation. The surname of the prisoner is known to the mission and is not being published for reasons of safety.

of the convict, the state of their health nevertheless does not allow them to work at full strength. Given this, B. finds the conditions:

> *not in keeping with any norms: there is no ventilation, work clothing or protective gear. Many things have to be done by hand or on completely obsolete equipment. The production staff have a negative attitude toward the convicts.*

Complaint review and attestation

Complaints sent to higher bodies and to the prosecutor's office are reviewed by the administration. During visits from inspecting bodies, no separate interviews are held in private with prisoners.

The FIDH and HRC Viasna mission has access to a number of letters from prisoners reporting the absence, in practice, of legally guaranteed control over places of detention.



The problem is also rooted in the fact that the assessment of convicts is done exclusively by the administration of a facility. In this situation, administration staff become sovereign masters of prisoners' fates. It happens that the convicts who are positively assessed return to freedom when granted a conditional early release (CER) or a change of detention regime, even when they have committed real offences, while at the same time, those who come into conflict with the omnipresent administration or fail to "reach an agreement" with it remain behind bars even if their conduct is exemplary.[128]

Article 187 of the CEC makes special mention of "attitude toward work" as one of the things that confirm a "convict's achievement of a certain degree of correction" that is necessary to be nominated for early release from his sentence.

Malicious disobedience of the requirements of the administration of a correctional institution

In places of detention in Belarus, Article 411 of the Criminal Code of the Republic of Belarus is widely applied, making it possible to exert additional pressure on convicts in places of detention. Using the threat of its application, administration staff of correctional facilities have full and unlimited influence on convicts with whom the administration is experiencing problems. Administration staff suggest compliance with a requirement that a convict for some reason or other (of a moral, psychological, religious or other nature) will refuse to perform, after which the convict is placed several times in SC, then in a CTR, after which he is transferred to prison conditions of detention or to a facility with a stricter regime.

> *Article 411. Malicious disobedience of the requirements of the administration of a correctional institution executing a sentence of imprisonment*
> 1. *Malicious disobedience of the legal requirements of the administration of a correctional institution executing a sentence of imprisonment, or any other opposition to the administration as it carries out its functions, by an individual serving a sentence in a correctional institution executing a sentence of imprisonment, if this individual has been subjected within the past year to administrative penalties in the form of transfer to a cell-type room, special ward or isolation cell, or was*

128. Monitoring report of Platform Innovation on problems in the area of conditions of prisoner detention in penal institutions of the Republic of Belarus 2011-2012. http://platformarb.com/zakonodatelstvo/zakonodatelstvo-respubliki-belarus/4077-2/monitoringovyj-otchyot-ipu-platforma/

transferred to a prison, for breach of the regime for serving the sentence (malicious disobedience of the requirements of the administration of a correctional institution executing a sentence of imprisonment), shall be punished by imprisonment for up to one year.

2. *Malicious disobedience of the requirements of the administration of a correctional institution executing a sentence of imprisonment, committed by an individual convicted of a serious or especially serious crime or who has engaged in especially dangerous recidivism, shall be punished by imprisonment for up to two years.*[129]

Refusal to work is frequently the reason for the application of this article.

The letters from prisoners that were given to the FIDH and HRC Viasna mission include the following examples of such situations:

In 2005 prisoner V.N. refused to do work assigned to him by the administration in Correctional Facility No. 1 and as a result was sentenced under Article 411 to an additional year of imprisonment. Later, in 2009, under the very same scenario, he was sentenced to yet another two years for refusing work in Correctional Facility No. 20.

V.S. (CF-13, city of Hlybokaye): *"I was asked to sign a commitment [a written commitment to obey the law], and I refused for the reason that I did not acknowledge my guilt. After a while, facility staff asked me to clean the toilet, and I refused. I spent the entire time (3 years) in SC and a CTR. On the day of my release, they slapped me with Article 411 and sentenced me to 2 more years and sent me to prison."*

It is worth noting that the characteristics of the penal system of the post-Soviet system that has been taking shape for decades are such that this type of work (cleaning toilets, collecting garbage, etc.) is done by convicts with low status who are rejected by other prisoners. The administration is well aware of this and uses such pretexts to obtain "refusals to comply with legal requirements." They know for certain that compliance with such requirements automatically leads to a convict being relegated to "low" status and henceforth being, for the rest of his term, a pariah on whom all manner of humiliation and abasement may be heaped. This group of prisoners is not involved in ordinary jobs in work brigades.

At the same time, complaints against such administration actions remain unattended to by the prosecutor's office responsible for oversight, and they lead to even more ingenious forms of pressure from the administration.

Conditions of work and payment for work in open-type correctional institutions and correctional settlement facilities (OTCIs and CSFs)

According to the information provided by Platform Innovation, the situation involving payment of work in OTCIs and CSFs is emerging even more dramatically. Convicts who are sent to serve their sentence in an OTCI or transferred to a CSF from closed-type correctional institutions under a procedure of change of detention regime are obliged to repay their cost of living in the institution dormitory and to pay for public utilities. Moreover, convicts pay for their own food in these institutions.
During the very first month after his arrival at an OTCI or CSF, a convict finds himself in the position of having no money at all, since even if he is actively seeking work or being set up in a job, he will see his first wages only the month after he is hired. In this situation, the convict has no choice but to either ask relatives for money or to take the advance for food that is stipulated by law (Article 48(4) of the CEC of the Republic of Belarus: "If convicts have no money of their own, their food will be provided at the expense of the state, with the convicts to later repay the cost thereof"). The cost of habitation, public services and food become a debt that the convict must repay out of his first wages. The debt grows with each passing month, and many convicts have a monetary debt to the institution when they are released from an OTCI or CSF.

129. Criminal Code of the Republic of Belarus

The administration of an institution assigns convicts to jobs without taking into account the wishes and abilities of the convicts. As a rule, convicts are given low-paid types of work both in the institution itself and in nearby populated areas. Convicts quite frequently work in kolkhozes and sovkhozes with quite low wages that are located near the institution.

Evidence has been noted of institution administrations providing manpower for private enterprises without formal agreement and with payment in cash. Convicts have also repeatedly reported that when they were signed up for work they were hired for unqualified positions (for example, an unskilled laborer on a construction site), while in fact they performed the work of a highly qualified mason, plasterer, concrete worker, etc. They were paid, though, a wage commensurate with unqualified labor.

Legal analysis

The system of the detention system of the Republic of Belarus results in a violation of Belarus' international human rights and labour obligations. In effect, it legalizes forced labor and reinforces a system that deprives inmates from many human rights.

In addition to being prohibited under the ICCPR and the ICESCR, the prohibition of forced labour is regulated by the norms stipulated in C29 of on forced labour and C105 on the abolition of forced labor. As defined in article 2(2)(a) of C29, "the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Although an exception for prison labour is contained in article 2(2)(c) of ILO C29, three conditions must apply cumulative and independently.[130] First, any work or service exacted from any person must be as a consequence of a conviction in a court of law. Second, the said work or service must be carried out under the supervision and control of a public authority; and third, that the said person is not hired to or placed at the disposal of private individuals, companies or associations.[131]

Consequently, the exception contained in Article 2(2)(c) does not apply to the situations of correctional facilities, penal colony settlements, and open-type correctional institutions, as compulsory labour is sanctioned without respecting the guarantees necessary throughout penal judicial processes. Moreover, compulsory labour in pre-trial investigation centers and jails is imposed to individuals pending a hearing of criminal charges, also in violation of ILO C29.[132] Belarus is also in violation of C29 even if the conviction is given according to a Court of law, when inmates are at disposal of private interests without fulfilling requirement needed to allow for such exception. In effect, "*work for private companies can be compatible with the Convention only where prisoners work in conditions approximating a free employment relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health."*[133]. Therefore, article 98 of the Criminal Enforcement Code of the Republic of Belarus by which work agreements (contracts) are not entered into with prisoners clearly violates article 2(2)(c) of ILO Convention 29.

It should be also remarked that the structure of the penal system also contravenes soft-low standards widely recognized by the international community, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR), in particular rules 71 to 76. Under rule 71(2), prison labour must not be of an afflictive nature. UNSMR makes explicit reference to Convention 29 when requiring in rule 72 that "The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution". As in the case of MLCs, the issue of the human rights responsibilities of involved private enterprises arises. Other

130. CEACR, General Observation 2001, para. 6
131. Article 2(2)(c)
132. Provisions imposing compulsory labour on all detainees have been repealed); Nigeria RCE, 1982, p. 75 (the Constitution (Certain Consequential Repeals) Act, 1979, has repealed the State Security (Detention of Persons) Acts, under which detained persons were to be confined under the same conditions as may be imposed on persons duly convicted of an offence by a court of law).
133. General Observation (CEACR) - adopted 2001, published 90th ILC session (2002) para.11, See also Direct Request (CEACR) -adopted 2011, published 101st ILC session (2012) and Direct Request (CEACR) - adopted 2001, published 90th ILC session (2002) regarding Belarus.

provisions relating to occupational health and safety, regulation of working time and payment[134] are also violated under the Belarus' penal system. The frequency of work-related injuries reflects the authorities' failure to protect the health, life and security of inmates.

Legislation concerning administrative detention[135] is also in violation of international human rights Law, notably because of the lack of judicial guarantees (art. 9 of the International Covenant on Civil and Political Rights).

The situation of solitary confinement is deeply worrying and in clear violation of international human right law. Without adequate court supervision, solitary confinement may amount to a violation of articles 7 and 10 of the International Covenant of Civil and Political Right (prohibition inhuman and degrading treatment).[136] In that sense, solitary confinement is seen by the Human Rights Committee as a "harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other that exceptional circumstances and for limited periods is inconsistent with article 10(1) of the Covenant.[137] Moreover, its indiscriminate use also amounts to a violation Article 10(3), which states that the essential aim of the penitentiary system should be the reformation and social rehabilitation of prisoners.[138] Finally, the detention conditions of prisoners or their working conditions and their related impacts on prisoners' health also contravene multiple Belarus' international human rights obligations, specifically articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (right to an adequate standard of living and right to the highest attainable standard of health).[139]

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134. See UNSMR; Rules 74,75 and 76
135. Procedural-Executive Code of Administrative Offences (PECoAO), the Rules of Internal Procedure of special institutions of internal affairs bodies executing administrative penalties in the form of an administrative arrest, approved by Resolution No. 194 of the MIA of the Republic of Belarus dated August 8, 2007;
136. Regarding prison conditions see, for example Howell v Jamaica, CCPR/C/79/D/798/1998, 7 November 2003
137. Concluding Observations on Denmark, (2000) UN doc. CCPR/CO/70/DNK, § 12.
138. See also; General Comment 21, § 10
139. See CESCR, General Comment 14, 11/08/2000 o the highest attainable standard of health, E/C.12/2000/4 and CESCR, General Comment. General comment 12, 12 /05/1999): *The right to adequate food, E/C.12/1999/5* and CESCR, General Comment. *General comment 4, 01/02/1992): The right to adequate housing, E/1992/23*

IX. The assignment of university graduates

On the compulsory assignment of university graduates. As unpopular as this may sound, there will be assignment. If you do not want to be distributed, pay your money and study at your own expense, and may the Lord guide you on your way. Why did we institute compulsory assignment? And not even for all fields, at that. Because the state, at its enterprises, and in its organizations and universities, trains specialists with a university education and pays billions, even trillions of rubles to do so, and the state is master of these specialists. And the state goes to great lengths today to ensure that there is manufacturing in the South, and in the North, and in the East, and in the West. And the state is right when it warns applicants, later students, that they are matriculating on budgetary financing, at the expense of the state, but that they will have to work three to five years, no more, under assignment. But have it your way: choose, if you will, a private education, and pay for it yourself; a state education means graduates in certain fields will have to move to some territory or other to work.

How could it be otherwise? How should the flow of the work force be regulated today? Therefore I do not intend to engage in populism here. There will be assignment of students. And tell me, what is wrong with that? Perhaps everyone would like to work in Minsk, especially those who attended university in Minsk. There are not that many jobs! Are young women going to, excuse me, prostitute themselves, and will the fellows drink themselves to death, go around with bottles to opposition meetings or shine the opposition member's shoes?[140]

Concluding speech of President Lukashenko at the Third Belarusian People's Meeting and answers to questions that were asked during the meeting, Minsk, March 3, 2006.

Under Article 23 of the Constitution, citizens of the Republic of Belarus are guaranteed the right to work as the most dignified means of human self-affirmation, i.e., the right to choose one's profession, type of occupation and work in accordance with one's calling, abilities, education, professional training and taking into account public needs, as well as healthy and safe working conditions (Article 41). Moreover, available and free general secondary and vocational education is guaranteed. "Specialized secondary and higher education is available to all in accordance with the abilities of each. Everyone can receive a proper education on a competitive basis for free in state educational institutions" (Article 49).[141]

In addition, the Code of the Republic of Belarus "On Education"[142] enshrines the concept of assignment as a procedure for "determining a graduate's place of work, implemented by a state educational establishment or, in cases prescribed by the Government of the Republic of Belarus, by a state body in the interests of the social protection of graduates, meeting the needs of the branches of the economy, and of the public sector, for professionals, workers and employees" (Art. 83).

Legal bases

On April 2, 1997, the Council of Ministers of the Republic of Belarus adopted special resolution No. 276 on the assignment of young specialists. In March 2002, compulsory assignment of graduates was enshrined in the new version of the Law "On Education."

In accordance with Article 10 of this Law, "graduates who received a full-time education at national and (or) local government expense in establishments that provide a vocational, specialized secondary and higher education, are distributed under the procedure prescribed by the Government of the Republic of Belarus." This procedure was prescribed by the Regulation on the Assignment of Graduates of

140. http://president.gov.by/press43742.html#doc
141. HRC Viasna. Distribution: What Do Students Need to Know? 10.04.2013. http://spring96.org/ru/news/62514
142. See in Russian: http://etalonline.by/?type=text&regnum=hk1100243#load_text_none_1

Educational Establishments, which was approved by Resolution No. 1702 of the Council of Ministers dated November 12, 2007.

Young specialists must work under assignment for one year, upon receiving a vocational education, or for two years, after receiving a specialized secondary or higher education, in places determined by graduate assignment committees. Under the Regulation, a young specialist must, on the basis of a job assignment certificate, go to his or her workplace and begin work at the enterprise, organization or establishment specified in the certificate, and work there for the stipulated period of time.

Employers, no matter State or private ones, are prohibited from hiring young specialists who are [recent] graduates of educational establishments without a job assignment certificate, or from terminating them before the end of the compulsory work period, except for termination on the initiative of the employer for just cause. Legal grounds for entering into an employment agreement (contract) are not the desire of a worker – a young specialist – to be hired and the agreement of the parties, but rather a job assignment certificate, the execution of which is compulsory. Such assignment is implemented throughout the Republic of Belarus in response to applications from organizations for the number of workers (employees) and professionals needed.

The assignment and job placement of young specialists is controlled by state bodies subordinate or accountable to the President of the Republic of Belarus, by national state authorities and other bodies subordinate to the Government of the Republic of Belarus, and by local executive and regulatory bodies to which educational establishments are subordinate (clause 6 of the Regulation on the Assignment of Graduates). No procedures for appealing the decisions of graduate assignment committees of educational establishments, including in court, are provided for.

Council of Ministers Resolution No. 1255 dated September 23, 2006 confirmed the Regulation on the Reimbursement of National and/or Local Budgets for Funds Spent by the State for the Training of a Worker (Employee) or Professional. In accordance with clause 2 of this Regulation, the “reimbursement of national and/or local budgets for funds spent by the state for the training of a worker (employee) or professional shall be made by graduates of educational establishments who have received a full-time vocational, specialized secondary or higher education, including on the basis of agreements for the targeted training of qualified workers (employees) and professionals at the expense of national and/or local government budgets, sent to work under assignment (young professionals), unless they have [already] worked one year under assignment – after receiving their vocational education, or two years after receiving their specialized secondary or higher education.” These rules were codified by amendments adopted on June 12, 2006 to the Law “On Education”.

“Accordingly, a student who has passed the prescribed competition and earned the right to a free education must, upon graduation from the educational institution, work the legally prescribed period under assignment. If not, he/she must pay for his education. Similar provisions are also built into the Law “On Higher Education” that was adopted on July 12, 2007 (and entered into force on 1/16/2008).

The requirement to reimburse educational expenses (even if indeed the allocation duty is not performed) provides grounds to maintain that this form of obtaining an education is from the outset, by its legal nature, compensated, i.e., paid,” as emphasized by an expert opinion from the Belarusian Helsinki Committee.[143] The opinion notes that Belarus, “in instituting the compulsory assignment of young specialists, has returned to the practice of planned training and assignment of personnel based on the needs (requirements) of industry.” While Clause 2 of the Regulation on the Assignment of Graduates of Educational Institutions, which was approved by Resolution No. 1702 of the Council of Ministers of the Republic of Belarus dated November 12, 2007, points directly to the fact that “the assignment of graduates is implemented by educational institutions in order to satisfy the requirements of the branches of the economy and the social sector for professionals and workers (employees)…”

143. Belarusian Helsinki Committee. Expert Opinion on Forced Labor in the Republic of Belarus. http://belhelcom.org/ru/node/13016

The Constitutional Court of the Republic of Belarus, after hearing the appeal of the National Youth Social Association of students, on the grounds of Article 40 of the Constitution and Article 116(1) of the Constitution, recognized by its decision of August 30, 2006 that the assignment of graduates of higher and specialized secondary educational institutions, except for those studying therein on a paid basis, was instituted "in order to improve the supply of personnel to key sectors of the economy of the Republic of Belarus," and that "the personal assignment of young specialists in today's conditions is an emergency measure on the part of the state, necessitated to a certain degree by the difficulties of the transitional period."

At the same time the Constitutional Court pointed out that the principles of personnel supply must in the longer term be based on a closer matching of the interests of the state, society and the graduates of educational institutions, and more effective use of those graduates taking into account their degree or specialization, and the creation, by employers, local authorities and bodies of self-government and the state, of working and living conditions for graduates that would realistically stimulate the work placement of young specialists in such regions without compulsory assignment. These recommendations have not been implemented by the state, though.[144]

Furthemore, the changes in the legislation in 2011 (in the new Education Code and the new Regulation on the Assignment of Graduates) did not anyhow change the situation of the gratuates to the better.

The assignment process

The assignment of young specialists takes place in several stages. Since 2006, upon entering a university, a student of the budget (non commercial) department signs an agreement that as payment for his education, he agrees to work in the place of assignment after completing his studies. However the FIDH and HRC Viasna mission interviewed several former students who had matriculated before this provision became effective, and they had been compelled to undergo assignment, in spite of the fact that upon entering the university they had signed no such agreement.

> *X. entered the State Medical University in 2003 on an unpaid basis, long before the adoption of Council of Ministers Resolution No. 1255 dated 23 September 2005 on the compensation of funds for education. X graduated from the university in 2008. Later he completed work-study. After work-study in 2009, he wanted to continue his studies by doing a residency, but for technical reasons this did not come about in Minsk, and he went to begin this in Russia. A year later he received, through a court, a claim for compensation for his education in the amount of about 10,000 U.S. dollars. He had not previously received a letter of notification from the university requesting voluntary reimbursement for his studies. Under a court judgment, the amount was paid. After that, as the story had become publicly known, there was a tacit decision at the Ministry of Health not to hire him. X. was informed of this by the head of a private clinic that first invited him to work, then turned him away, citing "instructions from on high." X. left to work abroad, and to this day it is not clear whether he will be able to work in his profession in Belarus.*[145]

Further, graduates of the 5th and last year go through so-called "preliminary assignment" where they first learn of the list of vacancies that a university has received. The assignment committee receives applications from state, or less frequently, private enterprises, which are filled by the committee depending on the success and personal attributes of a given student. It is believed that the most successful students have more of a choice, since the committee considers their candidacy among the first. In practice, though, it often transpires that students who had poor academic results receive a so-called "free diploma," since while they are waiting their turn, the offers on the vacancy list run out. In all this, a student has practically no right to independently choose his work. He may bring his own applications, which will be accepted for review, but there is no guarantee that the student will be given a chance to work in that very place, especially if the application is from a private enterprise.

144. Belarusian Helsinki Committee. Expert Opinion on Forced Labor in the Republic of Belarus. http://belhelcom.org/ru/node/13016
145. Interview by FIDH and HRC Viasna. The surname is known to the mission and is not being published for reasons of safety

The committee secretary keeps minutes of the meeting. A selected job is entered in a column opposite the surname of the graduate. The FIDH and HRC Viasna mission interviewed a young professional who reported that in his class, all notes on the place of assignment were entered by the committee secretary with a pencil, not a pen, i.e., whatever place of assignment was written under a student's signature could easily be changed later.

A final decision on work placement is formalized in the final assignment. Sometimes at this meeting, information from a previous assignment is simply copied into a new report, when [in fact] the graduate and the committee have not changed their decision. The results of the preliminary assignment do not guarantee, however, that the committee will not change its decision.
Categories of citizens who are not subject to assignment (Article 83(2) of the Code of the Republic of Belarus on Education) are those whose professions are most needed by the state, specifically:
1) Graduates added by the Ministry of Sports and Tourism to national teams of the Republic of Belarus;
2) Graduates of vocational schools and branches thereof that are located within correctional institutions of the criminal corrections system of the MIA, national unitary production enterprises of the Department of Corrections, and medical-labor centers;
3) Graduates of special teaching and educational clinics and special educational clinics.

Certain categories of citizens are also listed for whom assignment takes place with certain exceptions (Article 83(5) of the Code) (Orphans, pregnant women etc). It also specifies that "7) A husband (wife) whose wife (husband) works in and is a permanent resident of the Republic of Belarus will be given a job if he/she wishes it and if possible in the place of residence and/or work of the wife (husband); 8) Spouses who must be given a job through assignment simultaneously will be given jobs if they wish it and if possible in the same populated area."

A grad receives her/his final job assignment after she/he passes the state examinations or defends her/his diploma. Usually this coincides with the issuance of a diploma of higher education.

An employer must send a report to the educational institutional stating that the employee arrived at work on time. If the professional did not appear, the employer also reports this to the university or college. In this case, the graduate will have to repay the funds spent by the state for his education. The procedures for collecting the money are fixed in Article 88 of the Education Code. This code also contains a list of persons and the situations in which they are exempted from mandatory repayment of the funds spent for their education.
In 2012, the Constitutional Court adopted a decision according to which citizens who, instead of undergoing assignment, voluntarily entered military service under contract are also to be exempted from repaying the budgetary funds spent on their education.
Belarus has been striving since 2003 to join the Bologna Process. The Bologna Process is a process of convergence and harmonization of the systems of higher education of the countries of Europe, with the aim of creating a single European higher education area. The official date of the beginning of the Process is generally considered June 19, 1999, when the Bologna Declaration was signed. The Process includes 47 member countries out of the 49 countries that ratified the European Cultural Convention of the Council of Europe (1954). The Bologna Process is open for other countries to join. The ministers of education of the member countries of the European higher education area were supposed to review the application from Belarus at their summit in Bucharest on April 26-27, 2012. The item was dropped from the agenda, however, before the summit began and postponed until 2015. The reason given for this was the recommendations made by the working group of the Bologna Process in January 2012. It is precisely the assignment of students that is one of the factors holding up the inclusion of Belarus in the Bologna Process. In the opinion of independent experts, it will be extraordinarily difficult to become a full-fledged member of the Process as long as Belarus has forced job placement, along with other problems in its educational system.

There are no examples, however, to suggest the existence of political will in the government for the revocation of assignment. Quite the contrary, in fact. For example, Anatoliy Tozik, the Deputy Prime Minister of Belarus responsible for education, has repeatedly mentioned that for graduates of medical

universities, the assignment period should be extended to 5 years (it is now 3 years), and for graduates of all the other universities, to 3 years (it is now 2 years). Moreover, in the Deputy Prime Minister's opinion, assignment should take place a year before graduation from university, i.e., in the fourth year (it is now done in the fifth year).[146]

In spite of the fact that U. had to pay for her education, which began in 2004 (i.e., two years before the regulation on the reimbursement of expended funds was adopted), U. did not refuse her assignment and received work on assignment in a state establishment in 2009. In January 2011, during non-working time, U. was detained with an activist from a human rights movement not far from the place where a civil action was taking place. Her employer was immediately notified of her detention, as is the established practice. The management of the establishment summoned U. and informed her that she would no longer be able to work there. Since the rules for terminating an "assigned" professional are very complicated, she was accused of absenteeism, and on the following day she was dismissed under Article 42(5) of the Labor Code of the Republic of Belarus – absence without good reason, although, according to U, she had been at work on the day in question, and there were several witnesses to corroborate this. U. did not complete the entire period of work that was compulsory under her assignment, and when she contacted the University about this problem, she was compelled to repay the cost of her education, on a pro-rata basis based on the remaining time of her compulsory work. U. did not understand the method of recalculation, but she paid the money, fearing further repression.[147]

Other activists interviewed by the mission told of threats of assignment to places that had been ravaged by the aftermath of the Chernobyl accident.

An even worse situation befell a graduate of Brest State Technical University. First she was forced to retake the last exam before her dissertation defense four times, and then she was sent on assignment to a remote settlement on the border with the Grodnensk Region. The student herself believes that a prejudiced attitude of the dean's office and the professors were a consequence of her being a member of the elections committee from the opposition in 2010.

Compensation for education is calculated by higher educational institutions, and the graduates whom the mission interviewed did not entirely understand how it takes place, but according to them, it includes the stipend received by them during their education, payment for classrooms, professor salaries, etc. The amount thus obtained is indexed for inflation in Belarus, which has taken on vast dimensions in recent years. Due to this, it is impossible to realistically predict at the time of matriculation how much might represent the compensation for education in case of refusal to be assigned, and according to those whom we interviewed during the mission, many applicants now prefer to proceed directly to paid education, which frees them from subsequent forced assignment and frequently costs less than the amounts that are exacted in case of a refusal to be assigned.

Working conditions on assignment and social guarantees

Under Republic of Belarus law, young professionals who have received work on assignment are entitled to many guarantees. Thus, for example, young professionals are guaranteed the provision of official living quarters suitable for living in, from the state housing fund or, if there is no housing in this fund, funds to cover the cost of renting living quarters from citizens.

Another guarantee is the payment of all moving costs for moving to work in a different area, under the same conditions as when an employee is sent on a business trip, and a one-time allowance in the amount of one monthly base wage rate (salary) at the new place of work is paid. And if a young professional is sent on assignment to a rural area, she/he is guaranteed a pay increase of 50 percent. Those assigned to the area ravaged by the aftermath of the Chernobyl accident are even more protected under the law.

146. HRC Viasna. Distribution: What Do Students Need to Know? 10.04.2013. http://spring96.org/ru/news/62514
147. Interview by FIDH and HRC Viasna mission. The surname is known to the mission and is not being published for reasons of safety.

Here is how a former student of the Borisov State Forestry and Agro-Technical Professional College described the situation with guarantees and the realities for young professionals, to the FIDH and HRC Viasna mission:

> *"In 2011, two months before graduation, we were notified of the places we would be assigned to. Since I was born and live in Minsk, I should have been assigned to a Minsk forestry enterprise, but instead of that they assigned me to a settlement near the city of Mikashevichy, in the Brest Region. Everyone knew that our local forestry enterprise had submitted applications, but for some reason no one was sent there. When I learned that I would have to spend the following year in a semi-deserted village 200 km. from Chernobyl, I immediately attempted to find a way to somehow avoid this. Because this region is located in an area high in radiation, they were legally supposed to pay me compensation. Jumping ahead a bit, I will just say that I never received any compensation, of course. According to the Code of the Republic of Belarus "On Education," a young professional whose wife or husband has been sent to work on assignment first is to be given a workplace in the same community. I married my boy-friend, who had received an assignment in Minsk. Nevertheless, when I brought the marriage certificate and wrote an application asking to be reassigned to Minsk, they answered me with a categorical refusal, saying that I must go where I had been assigned. Of course I could have appealed this decision, but everyone here has known for a long time that our courts, as a rule, refuse to recognize students' right to be assigned under the conditions stipulated by law. I therefore ended up at a forestry enterprise in the city of Mikashevichy, where I was not provided living quarters, and my so-called "top-up" payments were all of 36 Euros. For my first month of work in the position of forestry enterprise technician I was paid 100 Euros. Anyone can see that it is impossible to live on this kind of money, even if you have your own apartment, and I had to rent an apartment, and somehow eat on top of that. After two months I managed to get reassigned to a Minsk forestry enterprise, but there I was forced to work practically without days off, because the salary there was not very high, either, and it depends on the number of days worked."*[148]

And here is how a former student of the Baranovichy State University, assigned to a school in a rural area, describes the situation with guarantees:

> *"I cannot call my work on assignment anything other than 'correctional.' I will begin with what they promised me: a decent wage ($170), a separate office and a two-bedroom apartment. The only drawback was that it was 12 km from the city, and public transportation ran extremely infrequently. But the railway stop was a ten-minute walk from home. I was assigned to live in a dormitory without hot water. Because the heating was steam, the neighbors immediately advised me to begin getting ready for the heating season. I decided to order some firewood, but it turned out that my turn would come only in December. Moreover, I discovered a hole in a heating pipe in such an inconvenient place that none of the welders could fix it. Then a pipe in the toilet area began to leak, and I had to go to the bathroom in boots, carrying an umbrella. To get to the railway stop, you had to walk through the neighboring village, but it took 50 minutes to reach it, not 10, as had been told me at the time of my assignment, and moreover you could go that way only in good weather, i.e., in summer. At other times of year, it was very difficult to cover that distance. I only made it a month under those conditions. When the cold set in, I began to freeze, and my allergy to the cold became acute. A colleague of mine, also a young professional, gave me shelter in the city. And so I had to get to work and back by hitchhiking, for the whole school year, and since there were not many cars going my way, I was late for work several times in the morning. I would be late by about three minutes at most, but even so I would be required to produce a certain number of explanatory letters. No one cared that I was trying to get to work. The most terrible thing was that I had to ride home the same way late on winter evenings after meetings that lasted about three or four hours, and by then, at about 8:00 p.m., no cars at all were going my way. The second year passed more or less quietly: quite a few sick leaves in wintertime from the temperature regime in the office (12-14 degrees C); no fresh produce in the stores; too few children in the school (there were only 35 pupils in the whole school); and endless innovations from the head of the education section. The most brilliant of these was a 36-hour work-week. With my legal 26 hours, I worked 36 hours, 10 of which I was not paid for."*[149]

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148. Interview by FIDH and HRC Viasna. The surname is known to the mission and is not being published for reasons of safety.
149. Interview by FIDH and HRC Viasna. The surname is known to the mission and is not being published for reasons of safety.

If a student refuses to work in the place to which he has been assigned, she/he has the option of voluntarily reimbursing the funds expended by the state on his education, or of appealing the decision in court with an explanation of the reasons for his refusal. But all the students interviewed by the FIDH and HRC Viasna mission reported that most graduates who attempted to dispute the legal grounds of their own assignment found no support in court. To make matters worse, if a petition is considered but not accepted, the matter ends with the former student having to repay the funds expended on her/his education, plus the amount comprising all the stipends that the student received during her/his studies, to the university budget. If the student does not have the money to pay, she/he may end up on a list of "persons not permitted to travel" abroad, and her/his property may be seized.

One of the students, who graduated fairly recently from Grodno Pedagogical College, was the victim of just such a situation. After there turned out to be no positions in the provincial town to which she had been initially assigned, the graduate was sent to a different region. After 9 months of working in poor living conditions on a meager salary, she could not stand it any longer and went home. *"A letter came from the college. ... she refused to pay for her education, because she was working on assignment. But ... and then in court you will not be able to prove anything, and whatever was decided in the court of original jurisdiction is the way everything will all stay."*[150] In attempts to prove that she had not been provided with suitable housing and salary, the former student went all the way to the Supreme Court. There they upheld the judgment. Under the court decision, she had to pay over three thousand dollars, after which she had to give up teaching.

Former students of Belarusian universities have had to reckon with the non-observance of social guarantees enshrined in the Regulation on the Assignment of Graduates of Educational Establishments, and these are no isolated incidents. As one former student tells it:

> *"I graduated from Minsk State Higher Radio-Technical College, where I studied in the full-time budget department for 5 years. There arose the matter of assignment: at the preliminary assignment they could not find a position, but later, at the very end of the academic year, they offered me a position in a college, as a laboratory assistant. The amount of the salary was not mentioned. Over the summer I was unable to enter continuing education, and therefore I had to appear for assignment. It was then that it became clear that my salary was 36 Euros [a month], with no living quarters provided. Essentially I have no benefits, and I cannot count on being reassigned."*[151]

Legal analysis

Although in principle such system may not necessary be contrary to international human rights law, the conditions in which the assignment system and job placements of young specialists takes place in Belarus is contradictory with both economic and social as well as civil and political rights.
The system in place is discriminatory in that, apart from the exceptions stated in the law, it ends up penalising those without the economic means to pay for their own education.
Both the government and the judicial system argue that current conditions of personal assignment of young specialists are undertaken as an "emergency measure" although no satisfactory justification is provided to prove the exceptional character of such measures.
Sanctions in case of incapacity to reimburse tuition fees can be considered disproportionate. They notably lead to violations of civil and political rights, such as restrictions on freedom of movement by refusing to allow concerned individuals to travel abroad.
The conditions in which assignments are made and the working conditions on job assignments could amount to forced labour. As stated previously, the prohibition of forced labour is found in article 8(3)(a) of the International Covenant on Civil and Political Rights. It states, "No one must be compelled to do forced or compulsory labour". Moreover, article 2(2)(a) of ILO C29, defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

150. Interview by FIDH and HRC Viasna. The surname is known to the mission and is not being published for reasons of safety.
151. Interview by FIDH and HRC Viasna. The surname is known to the mission and is not being published for reasons of safety.

According to Article 2(1) of the International Labour Organization (ILO) Convention No. 29, "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Controversial legal provisions and law enforcement practice on compulsory assignment of graduates violates the obligations undertaken by the Republic of Belarus under Convention No. 105. According to Article 1 of this convention, every member agreed "to suppress and not to make use of any form of forced or compulsory labor: [...] b) as a method of mobilising and using labour for purposes of economic development". This practice could amount to bonded labor, since students who cannot afford to reimburse fees (for which they do not know the exact amount) end up being indebted towards the state and with no real option but to accept any kind of work proposed, including in remote areas with harsh living conditions.

Mandatory work is accompanied by penalties that are twofold: first, as a cause for not admitting an applicant to an educational institution if refusal of the assignment, and second, as an economic penalty to reimburse the cost of the education in case of non-compliance with the agreement. The obligation to obtain a job assignment certificate bound students, forced to complete the assignment and prevented from accessing jobs of their choice. Considering that the assignment is done arbitrarily, without consideration of the degree of specialization and in a total disregard of basic contractual rules applicable under civil law and including retroactive application, the system of assignments constitutes a clear violation of article 6(1) of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of each individual to "receive the opportunity to earn a living by means of work that he freely choose or which he freely agrees to do".

X. Conclusions and recommendations

Each of the issues addressed in this report involves discrimination, arbitrariness and repression which are common to a wide range of human rights violations involving civil and political rights and economic and social rights.

Trade union rights are widely denied in Belarus. Obstacles to the establishment of independent trade unions are frequent and commonplace. Workers engaged in trade union activities are systematically repressed. Recommendations addressed by the International Labour Organisation (ILO), including those made by a Commission of Inquiry, remain unimplemented. Last June, the Belarus case was once again the object of a special paragraph issued by the International Labour Conference (ILC) - a procedure reserved for systemic violations of core labour standards with respect to the non-application of ILO Convention 87 on the Freedom of Association and the Right to Organise. This takes place against a backdrop of extreme precarity for workers and power imbalance which are encouraged by the legal framework.

Regulations have ubiquitously imposed the replacement of permanent labour agreements by short term contracts in various sectors, placing practically all workers in a precarious situation and under the threat of non-renewal of their contract in the advent of a conflict with management or if they become members of an independent trade union. Another element which weakens workers' ability to defend their rights is the fact that basic wages are completed by bonuses, which can represent a significant increase of their monthly income. Bonuses, however, are not wages and can be arbitrarily eliminated at any time.

More generally, **forced labour** is widespread in Belarus, in various sectors and in various forms.

Presidential Decree No. 9 "On Additional Measures to Develop the Woodworking Industry" signed on December 7, 2012, makes it virtually impossible for workers to refuse to enter into or extend their contracts, or to quit either because the worker disagrees with a change in existing work conditions or because his contract has expired.

During their military service, **conscripts** are obliged to carry out unpaid work that is unrelated to military activities.

National, regional and local authorities regularly impose **unpaid work on the working population** (a system called *subbotnik*). Although in theory, participation is on a voluntary basis, in practice, there is little possibility to oppose participation because negative repercussions for the workers can be far-reaching: non-renewal of widely used short-term labour contracts, arbitrary elimination of the bonuses paid out each month along with wages, etc.

Another issue of serious concern is the pervasive discrimination and stigmatization of **people suffering from alcoholism or drug-dependency who are also subjected** to forced labour. Instead of implementing effective public health programs to provide these persons – on a voluntary basis – with the medical treatment they are entitled to, the existing legal framework and policies punish them with an array of measures which have proven to be inefficient to fight alcoholism and drug-dependency. In public statements, officials refer to these persons as parasites and they are under the threat of administrative sanctions and ultimately arbitrary deprivation of liberty in Medical-Labour Centres (MLCs) where detention is combined with forced labour. The wages paid in such centres are particularly low and too low to provide a livelihood. People detained in MLCs can neither choose their work assignments nor refuse the work assigned to them. Conditions of detention in MLCs blatantly violate international standards.

Forced labour is also imposed on **prisoners** in various types of detention facilities. Prisoners cannot choose the work they perform, nor can they refuse to work under a threat of sanctions. Wages are extremely low and there is no external oversight on working conditions or on compliance with domestic and international labour standards. As a result, overtime, hours additional to the legal work week, is frequent and safety

at work is not ensured. Injuries at work are frequent and are covered up by the authorities rather than being properly recorded and addressed. Reportedly, detainees sometimes work for private companies. Generally, arbitrariness prevails in detention facilities in Belarus, and numerous prisoners' rights are routinely violated, including, *inter alia*, the right to due process, the right not to be arbitrarily detained, the right to health, and the right to life and safety of the person.

In Belarus, children can be separated from their parents through administrative proceedings which offer no due process guarantees and no certainty that the best interest of the child guides decisions. The parents of such children are referred to as **"obligated persons"** and have to compensate the state for the expenses related to the maintenance of their children. In case they can not do so, they are condemned by the civil courts to work, and the state provides work assignments for such persons while up to 70% of their wages is withheld by the state. These repressive measures replace the social rehabilitaion badly needed by the persons concerned.

Graduates from public education institutions financed by the State are obliged to work at the end of their studies for one or two years (depending on the institution they studied at) in a job assigned by the state. There is no remedy to oppose such assignment; the only way to avoid it is to reimburse all the expenses incurred by the government. Such expenses are calculated unilaterally by the authorities, and due to the inflation, generally amount to very high sums that people are unable to reimburse. During their assignments, graduates are often very poorly paid and their working conditions can be extremely poor. Under the Constitution, "specialized secondary and higher education is available to all in accordance with the abilities of each individual. Everyone can receive a free and proper education on a competitive basis in state educational institutions" (Article 49). As graduates have *de facto* no possibility to refuse the assignment, it can be considered to be forced labour.

Forced labour is prohibited under ILO Conventions 29 and 105, both of which have been ratified by Belarus. It is also prohibited under the ICCPR (Article 8) and the ICESCR (Article 6). The various forms of forced labour described in this report also entail a series of other human rights violations, ranging from the absence of due process to arbitrary detention, and include violations of the right to health, sub-standard detention conditions, violations of the right to an effective remedy to violations of standards regarding safety at work, and restrictions on freedom of movement.

The severe restrictions placed on trade unions and their activities violate core ILO Conventions and Article 8 of the ICESCR. Equally significant is the existence of repressive provisions in the field of labour which are applied against persons perceived as **opponents of the regime**. The domestic legal framework and policies also openly discriminate against persons referred to as **"asocial" elements**, namely drug-addicts, people suffering from alcohol dependency, etc. These situations blatantly violate the absolute prohibition of discrimination enshrined in Article 2 of both international Covenants.

It should be noted that the forms of forced labour described above are used by **private companies** and that violations of trade union rights reportedly also take place in **multinational corporations** operating in Belarus. While the state has the primary responsibility to protect and respect human rights, private companies have the obligation to respect human rights in their operations and to ensure, by exercising due diligence, that they do not contribute to human rights violations.

FIDH and HRC Viasna urge the Government of Belarus to:
Amend domestic legislation, in consultation with representatives of civil society and workers, in order to bring it into compliance with the international human rights obligations of Belarus, and, in particular, to do so in accordance with the recommendations of the UN treaty bodies and the ILO.

In particular:
- Amend the Labour Code, the Civil Procedures Code and the Criminal Code, and all other relevant laws, decrees and regulations to ensure that all of the discriminatory provisions addressed in the present report are eliminated, in particular those regarding the work contract system and the situation of the most socially vulnerable groups such as alcoholics and drug addicts, and persons in precarious situation such as those recently released from detention, the homeless and the jobless, "obligated persons" and other groups who need reinforced social protection and care, rather than a discriminatory and by nature repressive arsenal, to successfully reintegrated society;
- Guarantee freedom of association, by putting an end to state trade union monopoly' and by recognising

workers' rights to independently form and join organisations of their choice. Refrain from repressing and persecuting labour activists engaged in trade union activities;
– Grant the UN Special Rapporteur on the situation of human rights in Belarus access to the country and provide him with the necessary assistance to perform his duties, including by allowing him to visit all areas, public institutions and facilities and to meet with independent civil society organisations as he deems fit;
– Accept all pending requests for visits involving UN special procedures, including those for the Special Rapporteur on the rights to freedom of peaceful assembly and of association and for the Special Rapporteur on the situation of human rights defenders;
– Implement the recommendations issued by the International Labour Organisation's Commission of Inquiry on freedom of association;
– Implement the recommendations issued by UN treaty bodies, in particular in the concluding observations of the Committee on Economic, Social and Cultural Rights issued on November 2013 and which extensively address the issues raised in the present report.

FIDH and HRC Viasna urge the international community to use all of the means at their disposal to make authorities in Belarus follow the aforementioned recommendations and in particular to address the following recommendations:
To the United Nations:
– When discussing the situation of civil and political rights in Belarus in the framework of specific international fora, address the situation of economic, social and cultural rights;
– The Special Rapporteur on the situation of human rights in Belarus should make workers' rights, trade union rights and forced labour the focus of his next report to the UN Human Rights Council or the General Assembly;
– The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, should request a visit to Belarus;
– The Committee on Economic, Social and Cultural Rights, which recently reviewed the implementation of the ICESCR by Belarus, should urge the Government of Belarus to implement its recommendations to repeal or amend the legislation that violates international standards;
– The Human Rights Council should continue to monitor the situation in Belarus, under its agenda item 4, and publicly condemn the use of forced labour in Belarus, should renew the mandate of the Special Rapporteur, and urge the Government of Belarus to grant the latter access to the country.

To the International Labour Organisation:
– Continue urging Belarus to cooperate and implement recommendations on freedom of association issued by the ILO's Committee on Freedom of Association and Commission of Inquiry, as well as the ILO experts' recommendations concerning the implementation of the Conventions 29 and 105.

To the European Union:
While continuing to pursue efforts to obtain the fulfilment of the conditions related to the EU sanctions, such as release of all political prisoners, respect of the human rights, of the rule of law and democracy
– Publicly condemn and raise the issue of forced labour when meeting the Belarusian authorities;
– Improve the strategy aimed at putting an end to forced labour by enhancing cooperation with the other international community actors in that regard, including at OSCE, UN and ILO levels;
– Given that the EU, with its Member States, is the second largest trading partner for Belarus, ensure that products imported from Belarus are not made by using forced labour;
– Pursue the work initiated by the European Commission to adopt regulations banning the importation of goods produced using forced labour.

To the OSCE:
The Office for Democratic Institutions and Human Rights (ODIHR) should closely monitor the situation in Belarus. The OSCE Parliamentary Assembly should follow-up on the issues raised in this report and should invite its Belarusian members to take the relevant legislative initiatives needed to make domestic law compliant with international human rights standards also addressed in this report.

fidh

Keep your eyes open

Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.
FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

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FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website… FIDH makes full use of all means of communication to raise awareness of human rights violations.

VIASNA human rights center

Human Rights Center "Viasna" is a non-governmental human rights organization, created in 1996 during mass protest actions of the democratic opposition in Belarus. Viasna was initially a group created to help the arrested rally participants. It is now a national NGO with the central office in Minsk and regional organizations in the majority of Belarusian cities. Viasna has about 200 members all over the country.

On 28 October 2003 the Supreme Court of the Republic of Belarus groundlessly cancelled registration of Viasna for its participation in observation of the presidential election in 2001.

The main goal of Viasna is to contribute to development of the civic society in Bearus, based on respect to human rights, described in the Universal Declaration of Human Rights and the Constitution of the Republic of Belarus.

Objectives of the Human Rights Center "Viasna":

- Practical assistance to civic initiatives in the sphere of legal defense of citizens;
- Research into the state of the civic society and legal defense in the Republic of Belarus;
- Civic and human rights education;
- Promotion of democracy and human rights;
- Support of civic initiatives in the sphere of human rights

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate
FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

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